

A^c
VIEW OF
THE
CIVILE AND
ECCLESIASTI-
CALL LAW:

And wherein the Practise of them
is streitned, and may be releevd
within this Land.

Written by S^r THOMAS RIDLEY Knight,
and Doctor of the Civile Law.

The second Edition, by I. G. M^r. of Arts.



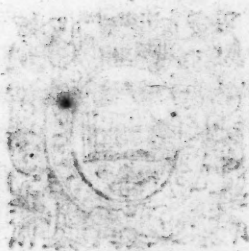
OXFORD, 12.

Printed by William Turner, Printer to the University: 1634.

Cum Privilegio.

ix
R 546
22

Rec. June 23, 1887



Printed by William T. Moore, Printer to the University



TO THE READER.



His Learned and usefull & View of both the Lawes, once & more adventureth it selfe upon the Opinion of Men, and it may now hope to receive a more indifferent censure then before, as being committed to a season more mature, and more perfectly dispos'd; for howsoever the Time that first brought this forth, could not be charged with any notable distemper; yet the Common-wealth wee live in is of that thriving nature, that however the present time may still bee good, yet it alwayes makes the succeeding Age better then it selfe. This argues the State not neare her ruine, though some unruly Spirits, led by an irregular Motion, have beene bold to anticipate; as if every one that had so much pittie as to feare, had also judgement

enough to foresee the ruine of a Kingdome. 'Twas
 more then enough for such Men to set downe the
 Fate of a single-soule, without resolving upon the
 doome of a whole Nation. But these that would
 seeme to know such high things, are most properly
 punished by being neglected: for to a Man that
 would bee thought to know, and knoweth not, no
 greater miserie can happen, then that hee should
 faile of his Expectation. If I were to serve or
 follow any time, I would propose the Present,
 which as it hath lesse of the pretences of former
 Ages, so it hath much more of the Moderation:
 and if it needs must be suspected that the State is
 not farre from her fall, let this be the onely rea-
 son, because she draweth so neere to her perfection.
 That which heretofore most of all incumbred these
 Dominions, was the disproportion of the Civill
 Power to the Ecclesiasticall. This a Great Prince
 abated, and the Act was truly masculine, yet like
 those of the strongest importance, would not be per-
 fected by the same hand; therefore it was by him so
 fully done, on the one side, that it might be feared
 lest it should runne over on the other. To prevent
 this, the discretion of these late discerning times
 hath warily provided; the wisdom of the Prince
 having

having so well tempered both the Powers, that it
may now be hoped, they shall agree one with an o-
ther as both doe in him, by a glorious correspon-
dence. The State thus bending towards the best,
and the most perfect mediocritie, this Author whose
hope that alwayes was, couldnot but revive again;
therefore it is, that though hee be dead, hee yet
speaketh. If still there be that will reprehend these
our paines, as if they were cast upon a man too
much sought after, be it so; but these men have
least cause to complaine, for if the matter of this
Booke be, as they suppose, then the onely way to
suppresse it will be to make it common, for things
of that nature are least of all enquired for, when
they are most easily to be found, but if they rarely
appeare, they are more eagerly sought after, and
the more obstinately esteem'd.

When first I would see this Treatise, I beheld
it at a distance, and not without some prejudice;
for so I was prompted by the insinuations of a fal-
lible Report; but finding it under the Protection
of the High and Mighty Prince Iames, I tooke
libertie to resolve against all popular contradic-
tion. And now, to seeke any other Patron for this
new Edition, I have thought it altogether inglori-

To the Reader.

ous. For what can the man doe that cometh after the King?

For a Note or two, which I have here and there timerously let fall, If the Reader expect that I should aske his pardon; there may bee cause, but there is no convenience: for this kinde of Complement is now adayes indifferently set before those things that are well, and those that are ill done. Besides, it would argue Certaine follie, to be engaged there for pardon, where our choyce is to offend. What I have here done amisse, I shall hereafter hope to rectifie, either by doing something that shall be better (if that may be) or (which is the safest way) by doing so no more.

I. G.



TO



TO THE HIGH AND
Mighty Prince JAMES, by the grace
of God, King of Great Britaine, France
and Ireland, Defender of the Faith, &c.

MOST gracious Sovereigne, since it
hath pleased Your Majestie of
Your Princely care towards the
Church, and Your Common-
wealth, to take knowledge of some differen-
ces that are in Iudicature betweene Your Ec-
clesiasticall and Civile Law, and the Tempo-
rall Law of this Land (by which joyntly
Your Majesties State is managed next after
Your owne most rare providence, and the
wisdom of such, whom it hath pleased Your
Highnesse to associate unto Your selfe in the
great affaires of Your Kingdome) I have been
bold to offer unto Your Majestie this simple
Treatise, as that which doth lay out the cause
of those Differences, more particularly than
any

THE EPISTLE

any man hitherto hath expressed the same. In
comming to which (because I doe speake for
those parts of Your Majesties Lawes, which
are lesse knowne unto Your people, and e-
steemed no otherwise of them, than they see
the practice thereof to bee here within Your
Land) I have thought good, as it were in a
Briefe, to set out the whole summe of both
the Lawes, to the view of the people, that they
may see, there is more worth in those for
whom I speake, than was by many conceived
to bee: So that the profession of the Ecclesia-
sticall and Civile Law may appeare to the
world, neither to bee idle nor unfit for the
State; so farre as it hath pleased the Royall
Predecessours of Your Highnesse to give en-
tertainment unto it, and Your Majestie Your
selfe to admit of it. In all which there is no o-
ther thing sought, than that such greivances as
have beene of late offered by one Iurisdiction
unto the other, and in consequence, to all
Your Subjects, who follow any suits in the
Civile or Ecclesiasticall Courts, may by Your
Princely wisdome be considered, and by Your
authoritie be redressed, if they be found to be
greevan-

grievances, indeed: for now as things are, nei-
 ther Iurisdiction knowes their owne bounds;
 but one snatcheth from the other, in maner,
 as in a barable ground lying betwene two
 Kingdomes, but so, that the weaker ever go-
 yeth to the worse, and that which is mightier
 prevailes against the other: the professors
 thereof being rather willing to give Lawes
 and interpretations to other, than to take or
 admit of any against themselves. For which,
 the weaker appeales unto your Highnesse,
 humbly desiring Your Majesties upright and
 sincere Iudgement to discern where the
 wrong is, and to redresse it accordingly, which
 is a worke worthy Your Majesties high con-
 sideration. For as the Land is Yours, so also
 the Sea is Yours, and the Church is under
 Your Highnesse protection, as a Childe is un-
 der his Tutor; so that all the Lawes thereof
 appertaine unto Your Majesties care & com-
 fort alike: For which, not onely the whole
 profession of Your Ecclesiasticall and Civile
 Lawyers that now are, but those which shall
 succeed in those places for ever hereafter unto
 the worlds end, will praise and magnifie

* *

Your

THE EPISTLE DEDICATORIE.

Your Majesties gracious favour towards them, and wee that now are will pray to God for the long and happie prosperitie of Your Highnesse, and Your Posteritie over us, during the continuance of this Heaven and this Earth, and after the passing away thereof, a perpetuall fruition of the new^{er} Heaven and the new Earth, wherein righteousnesse onely shall dwell for ever.

*Your Majesties most humble
and dutifull Subject,*

THOMAS RIDLEY.

To the Reader.

Gentle Reader, I confesse, as I meditated this Treatise upon mine owne motion (as I doe sometimes matters of other argument, when my leisure serves mee thereto.) so also I doe not set it out to the view of the world upon mine owne motion, but was desirous it should have bene kept in, saving that I must obey where I am bound. The thing that gave mee cause to this meditation, was, that I saw many times how meanely men esteemed of the Civile and Ecclesiasticall Law of this Land, valuing them by the practice of so much of them, as we have among us. And therefore I thought good, although not wholly to unfold the riches of them, yet to make shew of them folded up, in such sort as Mercers make shew of their filkes and welvers, laid up in whole peeces in their shops; whereby it may bee seene, what great variety they have of all these kinde of wares, although the goodnesse of the ware is selfe cannot be discerned, because it is folded up: Besides, seeing how frequent prohibitions are in these dayes in causes of either cognisance more than have bene in former time, I thought it not unworthy my labour to inquire and see upon what just grounds they are raised up in this multitude; not of any humour I have, to gainsay the lawfull proceedings of any Court (which I reverence and most readily acknowledge their authoritie in all things belonging to their place) but to know and search out the truth of those suggestions that give cause unto these prohibitions. For whenas such Lawes as are written of these businesses, are written indifferently, as well for the one Iurisdiction as the other, no man is to be offended if the one Iurisdiction, finding it selfe pres-

* * 2.

sed

To the Reader.

sed by the partial interpretation (as it supposeth) of the other, inquire the ground of such interpretation, and labour to redresse it if it may be, by the right interpretation thereof: To the end, that either Iurisdiction may retain their owne right, and not the one bee overtopped by the other, as it seemeth to be at this day: And that in such matters (as they concerne) of their owne right, as depend of no other authoritie but of the Prince alone: which is the thing only that is sought in this little Treatise. And therefore the Reverend Judges of this Land are to be intreated, that they will vouchsafe an equall interpretation of these matters, as well to the one Iurisdiction as the other, for so it is comely for them to doe, and if they doe it not, the other are not so dull-senced, but they can perceiue it, nor so daunted, but that they can flie for succour unto him, to whose high place and wisdom, the deciding of these differences doth of right appertain. **PENALOPA** is said to haue had many wooers comely in person and eloquent in speech, but shee respected none but her owne. **ULYSSES**: Such should be the minde of a Iudge, that whatsoever other appearance or shew of truth be offered, one saying, This is the true sence of the Law, and an other that, yet the Iudge should respect none but the very true germane and genuine sence thereof indeed. Which if it were religiously or indifferently observed in every Court, then needed not this complaint that now is, but every Iurisdiction should peaceably hold his owne right, such as the Prince, Law, or Custome hath afforded unto it.

THOMAS RIDLEY.



A VIEW OF THE Civile and Ecclesiasticall Law : [also wherein it is straightned , and wherein it may be releevd.

PART. I.

CHAP. I.

SECT. I.

The Division of the whole booke into foure parts.

What right or Law is in generall.

What is the Law publick, and what the Law private.

What is the Law of Nature.

What is the Law of Nations.

What is the Law Civile.



Efore I shew how necessary it is for his
Majestie and the Realme, to maintaine
the Civile & Ecclesiasticall Lawes, as they
are now practised among us in this Realm,
I will set downe, as is were, in a brieft,
what the Civile, and the Ecclesiasticall
Lawes are : then will I shew how farre forth they are
here in use and practise among us : thirdly wherein wee
are abridged, and put beside the use and possession there-
of, by the Common Law, even contrary to the old practise
thereof, and the true sence and meaning of the Lawes of
this Realme, and the Statutes in this behalfe provided: and
lastly,

What Law is.

1.
Jus publicum.

2.
Jus privatum.

The Law of
Nature.

The Law of
Nations.

lastly, wherein we might be releev'd and admitted to the practise of many things in the Civile Law, without prejudice to the Common Law; and so both the Lawes might know their owne grounds and proper subjects, and not one to be jumbled with the other, as it is at this day, to the great vexation of the Subject. But before I speake of the Civile Law in particular, I will define what Right, or Law is, in generall: Law therefore is (as *Ulpian* saith, *L. 10. in fin. ff. de Justicia & Jure*) the knowledge of Civile and humane things, the understanding of those things which are just and unjust. This Law is primarily divided into the Law publick, and the Law private. The publick, is that which appertaineth to the generall state of the common-wealth, for I meane the Law publick, not in respect of the Forme, that they were publickly made, as we make lawes in our Parliaments (for so all the Civile Law is publick, as made by publick authority) but in respect of the object, or end thereof, for that they concerne the Church, the Clergie, the Magistrate, and other like publick functions, none of which leuell at the rule of equity, or equality between man and man, as private lawes doe, but ayme at that which is most fit, in generall, for the common State.

The private Law, or the private mens Law, is that which concernes every singular mans state; which, for that it is occupied in giving every man his owne, it must of necessitie be proportionable to the rule of Equity and Justice.

Private Law is of three sorts, the law of Nature, the law of Nations, and the law Civile.

The law of Nature, is that which Nature hath taught every living creature, as the care and defence of every creatures life, desire of libertie, the conjunction of male and female for procreation sake.

The law of Nations, is that which common reason hath established among men, and is observed alike in all Nations, as distinctions of mens rights, buildings of houses, erecting

erecting of Cities, societie of life, judgements of controversies, war, peace, captivity, contracts, obligations, succession, and the like.

The law Civile, being largely taken, is the law that every particular Nation frameth to it selfe, as the *Athenian* lawes, and the lawes of *Lacedamon*, in which sense also, the law of *England* may be called the Civile law, for that it is the proper and private law of this Nation: but in more strict sort, the Civile law is the law, which the old *Romans* used, and is for the great wisdom & equitie thereof, at this day, as it were, the common law of all well governed Nations, a very few onely excepted.

And certainly, albeit sundry other Nations by the light of Nature, have many Rules and Maximes in the Civile law: yet, if all the constitutions, customes, and lawes, of all other people and countries were put together (I except none, save the lawes of the *Hebrews*, which came immediately from God) they are not comparable to the law of the *Romans*, neither in wisdom nor equitie, neither in gravitie nor in sufficiency. Whereupon it is, that most of other Nations, (saving our owne) although they receive not the Civile law wholly for their law, yet they so much admire the equitie thereof, that they interpret their owne lawes thereby. *Peckius de regul. juris. Reg. Quæ à jure communi. regul. 28.*

SECT. 2.

That there be foure Tomes of the Civile Law; The Digest, the Code, the Authentick and the Feuds.

The Institutes are an Epitome of the Digest.

What is the Digest, and why it is so called, and why the same are called the Pandects.

What are the Institutes, and why they are so called.

THE whole Civile law it selfe, is reduced or brought into 4. Tomes, whereof the first containeth the Digest or Pandects, taken out of 27. old reverent Lawyers

Digests what. workes, whereof sundry were before the coming of Christ; others flourished in the Emperours dayes, even unto the time of *Maximinus*, as it appeareth by *Spartianus* and *Lampridius*, in the life of the said Emperour: which said Tome is divided into 50. bookes, of which, every one containeth sundry titles of great wisdom and variety.

To this Tome, I adde the Institutions, which are a brief of all the former bookes, composed of purpose by the Emperour in the behalf of young learners, that thereby having the whole Digest drawne into a *Compendium* of 4. bookes onely, they might with more alacrity, goe forward in the study of the law: having, as it were, the first Elements of the whole profession in this little Treatise; whereas otherwise without the help hereof, their weak minds might be elugged with the multitude and varietie thereof, and so either altogether leave their studies, or with more labour and diffidence (which oftentimes discourageth young mens minds in a long matter) come to the end thereof, to which, by the direction of this brief, they might sooner attain, and that without much travell or distrust.

why so called. The Digests have their name, of that they are put into a comely order by the Author, ranging every booke and title into his proper place, such as either the course of Nature affords them, or are fittest for the practice of the profession.

The Pandects. The same booke again, is called *Pandects*, of the Greek words *πᾶν* & *δίκης*, for that it compriseth in it self, all whatsoever *Justinian* drew out of 150000. verses of the old bookes of the law.

The Institutes. The Institutes are so called, because they are, as it were, masters and instructors to the ignorant, and shew an easie way to the obtaining of the knowledge of the Law.

The matters wherein the whole law is occupied, are either the persons in the common-wealth, or the things belonging or not belonging to them, or the actions where
by

by men doe claim in judgments such things as are due unto them by law.

SECT. 3.

The Pandects, or Digest are divided into seven parts, and they againe into fiftie Bookes.

That the first part thereof containeth foure Bookes, and what is the summe thereof.

VPon a more particular division, the whole Digest is divided into seven parts : whereof the first part, standing upon foure bookes, containeth the principles, and as it were, the first elements of the Law; as, what Justice & Right is, from whence the Civile Law hath his beginning, what persons be the object of the Civile law, what Magistrates the common-wealth of the *Romans* had, by whom either the lawes were made, or executed : the divers kindes of Jurisdiccions, which those Magistrates used; Meere, Mixt, or Simple, according to their place: the corrections which the law used against such as disobey the Judge, either in not appearing, or not performing that which is injoynd them : what provision it made against such, as by violence rescued men out of the Judges hands: what Holy-dayes there were, wherein the Courts were not held : what order the Law tooke against the plaintife, that having cited the defendant, had no Libell ready to put into the Court, unlesse happely otherwise the parties upon private agreement compounded the matter betwene them : who were to be admitted advocates, and what causes barr'd them from the office : what is the office of a Procurator, Sollicitor, or Sindict, or Factor ; and under what cautions they were admitted, if they had no Proxie, or Mandat, or the partie principall did not in presence authorize them: how they were punished, who upon reward tooke upon them to vex men unjustly in the Law, in manner as common Barators doe : what persons having lost opportunitie to allege any thing for them-

selves beneficiall in Law, may be restored thereunto againe; as Minors, and such other, as by feare or craft of the adversarie have beene driven away from their lawfull defence: how persons of common trust, as Marriners, Inholders, and such lik, are bound by Law to restore such things as they have taken in charge to keepe.

SECT. 4

That the second part hath seven bookes, and what are the Contents thereof.

THe second part, being distributed into seven bookes, yeeldeth matter of Judgement, as who may be Judge, and who not: where and before what Judge every one is to be convented: how many kindes of Judgements there are, Civile, Criminall, and mixt of both: by what actions things that are ours by right of inheritance may be challenged, whether they be corporall or incorporall: what action the Law affords, if any man conceale that is ours, that wee may come to the sight thereof: what action lyeth against him, who by evill persuasions, or lewd inticement hath corrupted another mans servant, or having run away by his ill counsell, hath concealed him from his master: what provision the Law hath against Dice-play, and such as keepe Dicing-houses: how he is to be punished, which being put in trust to measure any mans ground, makes a false report of the measure thereof: that no man hinder a corse of a dead body to be carried to buriall, or to be buried in such places, as hee and his predecessours have right unto, or to build a Tombe to that purpose, and beautific the same.

SECT. 5.

That the third part stretcheth it selfe into nine bookes, and what they contain.

THe third part, imbracing nine books, concerneth personall actions, which rise not of cause of right or possession,

sion, but of covenant and obligation; as things credited or lent in a certain summe; the means how to recover the same, if it be denied, *that is by oath of the partie that denieth it, unless he may be convicted, either by witnesse or instrument, that he hath forsworne himselfe*: how many kinds of oaths there are, voluntary out of Judgement: necessarie exacted by the Judge in doubtfull cases, where otherwise there wanteth proove to manifest the trueth: Judicall, such as one partie offereth to another in Judgement, and cannot be refused without just cause: and lastly, that which the Judge offereth to the plaintife, as concerning the value of the thing which is in strife, or the charges that he hath beene at in recovering of the same: what exceptions there lyes against Obligations, as that which for cause was given, and cause did not follow: that the cause was dishonest, for which that is challenged that was given: that the summe was not due which was paid, and therefore not to be exacted, but to be repaid: actions for things lent for a certain time, and to a certain use: actions for things pawned: actions that either passengers have against Marriners for the goods or ware that they have brought into the ship, or Marriners have against Passengers for their fraught: actions of ejectment, wherein the passengers and Marriners are bound each to other for contribution of the losses of such things that have beene cast into the sea, in the time of a storme or tempest, according to the qualitie or quantitie of the goods they have in the ship: actions whereby masters are bound to answer for their servants contracts, and fathers for their children, in such things, or negotiation, as they have put them in trust withall, saving where the childe borrowed money without his fathers privitie for riot, and for such purpose as his father hath no use thereof: Remedies for women, when by weaknesse of their sexes, and lack of counsell, they have inwrapt themselves in furetifhip for other men: action of compensation, where a debt is demanded, for which an equivalent portion hath beene received in lieu

Rest or satisfaction thereof, actions of mandate, or commandement, wherein one hath done some worke, or laid out some money upon an other mans mandate or word, and yet when he requireth allowance thereof, it is denied him : actions of societic or fellowship, wherein either the societic is required to be maintained, or the money put in common bank to be divided : actions of bargain and sale, either pure or conditionall, the bargain being once made, the losse and gaine that after happeneth is the buyers, unlesse the seller retain some further right in the thing sold unto himselfe : actions of letting or setting either of the use of a person, or the use of a thing upon a certain hyer : actions of change, and such like.

SECT. 6.

That the fourth part containeth eight bookes, and the contents thereof.

THe fourth part being digested into eight bookes, ministreth actions for such things as are accessarie to contracts, such as pawnes and pledges are, which are given for the better securitie of the contract : actions for restitution wherein a man hath beene deceived in a bargain, more than the halfe value of the thing sold ; or wherein the seller hath concealed some fault in the thing sold, which he ought by Law to have revealed ; or promised some qualitie in the same, which was not in it ; or where the thing sold, hath beene evicted by an other, out of the hands of the buyer, himselfe using all just defence of Law for himselfe : actions for interest and usurie, and how many kinds thereof there be that men use by land, Lucratory, Compensatorie, and Punitorie ; whereof the first is altogether unlawfull, the other two allowed where either just gain ceaseth, or just losse followeth, upon that occasion, that which is lent is not payd according to the day of covenant. Sea-usurie, otherwise called nautick usurie, is greater than land-usurie, and yet allowed by Law, for
that

that the seafaring man takes upon himselfe the danger of the transporting thereof, and securing the same, at such place as it is appointed to be delivered. In deciding of matters of controverſie, the Law proceeds ſometimes by witneſſes, ſometimes by instruments, ſometimes by preſumptions, where knowledge or ignorance of fact, or Law is preſumed. Sponſals are mutuall promiſes of a future marriage: marriage is a lawfull coupling together of man and woman, the company and ſocietie of the whole life, the Communion of all Divine and humane rites and things, and of one and the ſame houſe, wrought by the conſent and mutuall good will of the one towards the other: in elpouſals and marriages is to be conſidered, who is to be joyned together, at what years, and by whose conſent: there doth wait and attend upon Marriages, Jointures, Dowries, and ſuch like, and ſometimes Divorce, which is ſo called of the diverſitie of the mindes of thoſe that are married; becauſe ſuch as are divorced, goe one a divers way from the other. The cauſes whereupon Divorces grow, are Adultery, deadly hatred one toward another, intolerable cruelty, neereneſſe of kinred and affinity in degrees forbidden, impotencie on the one ſide or the other: actions of Dowrie after divorce or ſeparation; actions againſt a mans wife imbeaſſelling away his goods; actions againſt a husband diſclayming his owne childe; and his wife being with childe, if he make doubt thereof, means how and where ſhe ſhall be kept untill her delivery, ſo that no falſe birth ſhall be put in place of the true childe; or that ſhe abuſe not her husband or the next heire, with a falſe ſhew of that which is not. Tutelage & government of children under age, which is either teſtamentarie, or due to the next of kinne, or dative, all which are either to be confirmed or diſpoſed of by the Magiſtrate. Adminiſtrations of Tutors and Curators, and how farre they are endangered by their office, and wherein they are to interpoſe their authoritie and conſent, and for what acts the pupils or minors may be ſued, done by the

Divorce what, and why ſo called,

The cauſes of Divorces.

tutors or curators; how any may be argued to be a suspected tutor or curator; and how, and by whom he may be removed, if there appear just cause of suspicion against him. A tutor is chiefly set over the person of the child; usually over his goods; but the Curator or Guardian is chiefly set over the goods, and then over the person of the child. A child (his father being dead) by the order of the Judge, is to be brought up with his mother, unless she hath had a second marriage, which if she have done, then is he to be brought up with some of his nearest kinsne, such as is knowne to be an honest man, and will have a care of his good education; with whom the Judge is to allow him such maintenance, as all his flock be not spent therein; but evermore something be left against he come to full age. When the time of tutelage, or curatorship is ended, they are to render account unto the Judge, what they have received, and how they have expended the same, and what residue is left; and according as their profits are, either by oath, or otherwise, for the Judge either alloweth, or disalloweth the same. If the Tutors or Curators prove bankrupte, or unable to satisfie the Papill of Minor, then lyeth an action against their successors for the satisfaction of the same; and if both of them fail, then lyeth it against the Judge, or Magistrate, whether he have not received any caution at all of the Tutors or Curators, or hath received an insufficient caution, or insufficient successors, knowing them to be insufficient; other wise he is not to secure for the same, and future estates of the child. The Tutors or Curators are to sell nothing of those things that are the childrens, saving such things which by keeping cannot be kept, unless they have the order or decree of the Judge thereunto, which the Judge is not to decree, unless the child be to farre in debt, that it cannot be satisfied, without some part of the other goods, or there be some other like just and necessarie cause like unto this, which may not be avoided. As Minors have Curators and Governors, so

also mad persons, and prodigall persons are appointed to have governors by law, for that they can no more governe their owne state, than the others can. Prodigall persons are they that know no time nor end of spending, but ryot or lavish out their goods without all discretion.

SECT. 7.

That the fift part comprehenderh nine bookes, and the matter thereof.

Vnder the fift Section, which compriseth in it nine bookes, are contained last Wils and Testaments, and who they be that can make the same: and how many kinds thereof there be, Solemne or Militarie, and they either put in writing, or else Nuncupative what is an unjust, or Void Will: what is to be thought of those things, which are found either to be blotted out, or interlined in a Will: how Heires or Executors are to be instituted, or substituted in Wils; and under what conditions they may be either instituted, or substituted in the same: what time an heire hath to deliberate after the Testators death, before he prove the Will: what is a Militarie Testament, and what priviledges it hath: how the inheritance may be either got or lost: how Testaments are to be opened, published, and writ out: what mens Testaments are to be opened, and published: of the punishment of such, which, a Will being extant, seeke by Administration, or some other like means to possesse the goods: and of those which either forbid, or compell any man to make a Will: of the power or right of Codicils of Legacies, and bequests; as what things may be bequeathed, and what not; to whom any thing may be bequeathed; and of the signification of the words, and things which doe appertain unto Legacies: of yeerely and monethly Legacies, what time they be due, in the beginning of the year, or in the end: which of them be pure, and which conditionall: of the use, profit, and benefit of any thing bequeathed: of dwelling, and workes of servants bequeathed: of Dowry bequeathed,

bequeathed, and what profit the Legatorie hath thereby : or choise or election bequeathed : of whear, wine, and oyle bequeathed, and what is contained under every of them : of ground furnished bequeathed, and the instruments thereto belonging, and what is to be understood by that bequest : of store bequeathed, in Latin called *Pennis* ; what is comprised under that word : of household-stuffe bequeathed : of education and bringing up bequeathed : of gold, silver, womens attire, ornaments, and such like bequeathed, and what is to be understood by every of them : how Legacies may be taken away : of things that are doubtfull in a Will, and how they are to be understood : of those things that are left for punishment sake in a Will, whether they be available, or otherwise : of those things which being bequeathed in a Will, are counted notwithstanding as not bequeathed : of those things that are taken away from the Legatories in the Will, as unworthy of them : of conditions, demonstrations, and causes ; what force they have, and how they prevaile in a Will. Of the Law *Falcidia*, what it is, and how men thereby are restrained from bequeathing any more than three parts of their goods, so that a fourth part thereof should still remain with the heire ; and if any man had received in Legacie more than he might by the law *Falcidia*, that hee should put in band to restore that, if any unknown debt after should appear, so the same were true debt : at what day a Legacie becomes due ; that is straight from the death of the Testator, unless it be left to be paid upon a certain or uncertain day, or under a condition ; and that the heire enter into band to pay the legacie when the day comes, or the condition happen ; and if he refuse to doe it, then the legatorie to be put in possession thereof untill the day or condition happen.

SECT.

SECT. 8.

That the sixth part is spent in seven bookes, and the subject thereof.

THe sixth part spreading it selfe over seven Bookes, handleth matters of possession of goods, or Administration thereof, not growing out of the Civile Law (which onely makes heires, & giveth right of succession) but out of the Pretorian law, or law of conscience, which in equity calleth sundry to the succession of other mens goods by administration, where there is no Will, and in some cases where there is a Will, as where the Will is concealed, or the Executor renounceth the Will, but if the Will once appear, then the administration forthwith ceaseth. In cases where Administrations are to be granted, the children of the deceased have liberty to take it, within a year after the death of the deceased, and if they be further off of kin, then they have only a hundred dayes to take it in, unlesse those which are to take it are Infants, mad, deaf, dumbe, or blind, in which cases there is a longer time assigned. The Pretor granted administration not only according to the tables of the Testament, but many times even against the tables of the Testament: as where a childe is not disinherited in his Fathers Will by plain termes, but passed over with silence onely, as not remembered; or that the childe was not borne at the time of his death, & so not known whether any such child were living, or to be hoped for, or not: In which case, if it doe after appear, the Mother is put in possession of that which is the childes part. If there appear no Will, the Administration is committed in this order; First, the children of the deceased are admitted: Secondly, those that are next of kin in the Male line: Thirdly, those that are next of kin in the Female line, (which difference notwithstanding betweene male and Female at this day is taken away, and they that are next of kin are equally admitted in either sex)

Lastly comes those which have right thereto, either in that they are man or wife. The Law sundry times, where a thing is done, or intended to be done, against an other mans right, & there is no provision for it in Law, yeeldeth the party grieved an Interdict or Injunction to hinder that which was intended to his prejudice. As where one buildeth an house contrary to the usuall and received forme of building, to the injurie of his neighbour, there lyeth an Injunction *de novi operis nunciacione*, which being once served, the offender is either to desist from his worke, or to put in suerties, hee shall pull it downe again; if hee doe not within a very short time avow the lawfulnessse thereof. Again, there lyeth an Injunction where hurt is not yet done, but feared to be done; as where a house is ruinous, or the eves, or any outcast worke thereof hangerth dangerously over the way, so that it is doubted it will fall & hurt some that passe by, the owner or Lord thereof is to put in suertie to the Magistrate, that if any be hurt, or miscarie thereby he shall answer for it. If any cause the water of the river, or rain-water to run an other course than before time it was wont to doe, and that the neighbours are like to be prejudiced thereby, the Law yeeldeth an Injunction; either to stay the worke that is intended, or to secure the neighbours for the hurt that is like to follow thereupon. If Customers, Collectors, or Tolle-gatherers exact more subsidie, or other like publick duties, than by Law they ought; or distrain any mans goods, upon pretence thereof, or stay in their hands such duties as they have received, whereby the partie that hath paid it, falleth into any forfeiture, or that they repair not the publick high wayes; in which respect subsidies, tributes, and other such like duties are given to Princes, they are to be punished in the double value of that which they have received, & otherwise to be fined for their ill dealing in that behalfe. In gifts which are purely given, or under a day, or condition, and specially in those that are given in contemplation of death, which are compared to Legacies themselves, a right passeth with-

out deliverance, and giveth sufficient matter of challenge unto him, to whom they are given. The means or wayes whereby the Lordship or right of any thing is gotten, be it naturall, as by the first occupying the same, by finding the same, by bringing it into a forme or fashion, by gaining by the sea or river, by delivery, or such like: or, be it by civill means, as by getting the possession of any thing by good title, and good faith, so long as it will make a just usurpation, or prescription, by holding it as heire, by holding it by a gift, by taking it up as a thing forsaken, by holding it by legacie, dowrie, or inheritance, by coming to it by sentence definitive, or interlocutory, by confession of the adversary, by cession of the partie, by auctority of the Judge, and the same have bin fraudulently alienated by the debtors, there lieth an Injunction to put the partie injured into possession. All Injunctions for the most part are prohibitorie, & serve either to get, or to keepe, or to recover possession, and are called commonly by the first name of the writ, as where one is denied the possession of inheritance belonging to him, an Injunction is granted him, to put him in possession, called *Quorum bonorum*; or if it be for a legacie, *Quod legatum*; and if it be in generall cases, *Ne vis fiat ei qui in possessionem missus est*: That he that hath gotten the custodie of the Will exhibite it: that no private building, or such like, be set up in a holy and sanctified place, and if it be, that it be pulled downe again: that no Nuisance be done in publick places, or high wayes, other than such as by the Law are allowable: that publick high wayes be repaired: that nothing be done in any river, or the banks thereof, whereby Ships or Barkes may not passe thereon: that nothing be done in any common stream, whereby the water should be forced to run other wise this year, than it did the last summer afore: that it may be lawfull for every man to saile or rowe in any publick stream: that the banks of the river be repaired. Of force, and force armed, where two are in possession of one thing, and neither of them came by the same by force, or by secret slight, or by sufferance.

rance of an other, there lyeth an Injunction for conti-
 nuance of either of their possession, called *visi possideris* :
 That a man may use such private way, as he hath used the
 year past, and repaire the same without interruption of an
 other : That no man turne away the daily running water,
 or the water which falls in Summer from an other mans
 house, or ground to his hinderance : That water-courses in
 rivers, and other like places be maintained : That such as
 have right to draw water out of any spring, or well, be not
 forbid the use thereof; and that every one have free liberty
 to cleanse, purge, & to repaire the same, if there be any de-
 cay in it: That no man be forbid to scoure, purge, or cleanse
 his privies, sinkes, or vaults : That whatsoever is done by
 open force, or secret subtilty, be restored where it was,
 before such force or subtilty was done, unless the partie
 grieved release the same : That he that holds any thing at
 an other mans will, restore the same upon competent war-
 ning, or knowledge given him thereof : That a man may
 lop or cut the boughes of an other mans tree, annoyng his
 ground, if after warning given thereof, the owner thereof
 do not reforme it. That it be lawfull for a man to gather
 such fruits of his, as fall from his own tree into an other
 mans ground, without any trepasse to the owner of the
 ground, so that he gather the same within three dayes after
 they are so fallne; for otherwise the law presumes he makes
 no reckoning of them, and fruits lying upon the ground do
 easily putrifie : That a man may challenge his children out
 of an other mans hand that holdeth them from him : That
 a Tenant after his lease is expired, may remove, and quietly
 carrie away such things from the farme, as he brought thi-
 ther, so that the Rent be paid, and those things which hee
 brought thither, were not bound for the payment thereof.
 Actions are taken away, and possessions maintained by ex-
 ceptions, prescriptions, and prejudices, which themselves
 are many times in steed of actions, as is the exception *de re*
indicata, which is an exception that determineth the cause

Exceptions. in controversie. Of Exceptions, some are perpetuall and
 perem-

peremptory, some are temporall and dilatory : Perpetuall and peremptory are they which evermore have place, and can never be avoyded ; Temporall and dilatory are they, which are not evermore in place, but may be avoyded : Exceptions are alleaged, either because that is done which ought to be done, or that is done that ought not to be done, or that is not done that ought to be done. Of *Prescriptions* likewise some are perpetuall, some temporall ; the effect of either of them, is to determine the action, either in the manner of doing, or by the time when it was done, or by the place where it was done, or by some other like circumstance.

An Obligation is a bond of the Law, whereby a man is necessarily bound to pay some thing to another man: *Obligations* arise either out of bargains betweene man & man, or out of some offence that is done : Obligations by bargains, are procured either by some thing that passeth betweene the parties that doe contract, or else is effected by words, or consent. Out of obligations spring actions, which are nothing else, but a right to prosecute that in judgment, which a man pretendeth to be due unto him, whereof there are two sorts ; of which, one is a challenge for right of a thing due ; the other, a suite against a person for some offence or trespassse done.

SECT. 9.

That the seventh part is divided into six bookes, and the matter thereof.

THe seventh and last part being divided into sixe Bookes, treateth of Obligations, which stand in words, and their effect : how farre two or more principall debtors are bound to the creditor in the whole, or every one for his owne part : Of Suerties, and how farre they are bound, and whether the discharge of the one be the release of the other, and by how many wayes Obligations by words are dissolved or released, by renovation, by payment, by acceptance

of the debt not paid, as if it were paid. Of Obligations some are Civile, as those which have been heretofore handled, some Pretorian or pertaining to the Chancery, as those whereby Tutors, Curators, and Proctors, enter into band unto a child, that his state shall be safe, that is committed to their hands: That, that shall be paid which the Judge ceaseth: That the Plaintife shall ratifie and allow that which his Proctor shall doe for him in judgement, and such like. Criminall Judgements are private or publick, that is, they are commenced either upon private offences, or upon publick faults and suits. Private offences concerne private mens revenge and injuries. Publick, the revenge or injurie of the whole state. Private offences which had ordinary proceedings, and ordinary punishment, were many, among which Theft is the chiefeft, which is a deceitfull fingering of another mans goods, with intent to gain either the thing it selfe, or the use or possession thereof; so that the mind alone maketh not theft, but the act joyned to the minde, be the quantity never so small. Of Thefts, some are manifest, other not manifest; manifest is that, wherein the offender is taken in the deede doing, or taken before he could carrie away the thing stolne thither, whither he intended: the punishment whereof was foure double the value of that which was stolne: Not manifest, was that wherein the party offending was not taken in the deede doing, and the pain thereof was the double of that which was purloyned, or taken away. If any pilfery or theft be done in a Ship, Taverne, or Inne, the Master of the Ship, Taverne, or Inne, is to answer double the value thereof, if the same be done by himselfe, or their selves, or any of their mariners or servants: for it behoveth them to have honest men, whom they are to employ in such services: But if it be done by any of the passengers, or guests of the house, the owners of the Ship, Taverne, or Inne, are not to answer for the same, for they cannot turne away such guests as come into their house; neither, in all likelihood, know they the quality or condition of their guests. If any man privily, unwittingly

Private offences.

the

the owner thereof, cut downe, hack, or harke any tree of any sort whatsoever, or those that are of the nature of trees, as Ivie, Reedes, Willows, so that they be spoyled, hee is to answer the double value of that hee hath cut downe and spoyled: and further, if it be a Vine-tree, to be punished as a robber. Hee that taketh any thing away from another by violence, is to be punished in the worth foure fold, for that it is a sin more grievous than theft: If any man upon any ill intent, make a Tumult, whereby any hurt commeth to any man, he shall answer double of that the party is harmed in: If any, upon a burning of a house, or the fall thereof, or upon a shipwrack, or the spoyling of a boat or ship, steale any thing away, or being put in trust to keepe any thing thereof, conceale the same, hee shall pay the foure double of the same; but if any man set the same afire himselfe, he is either to be cast out to wilde beasts, or is to be burnt with the same fire he went about to burne an other with. If any have spitefully, contumeliously injured an other man, his wife, or children, in deede, word, or writing, they are to forfeit so much as the partie grieved shall esteeme himselfe injured by, or the Judge shall taxe it at. A famous Libell is where a man hath of malicious purpose writ, compounded, or set out any thing to the infamie of an other, without a name, or with a name, and the punishment thereof is death, and anciently was that he lost the power or liberty to make a Will; the like punishment followeth him, that having found an infamous Libell, doth not by and by spoyle the same, that the knowledge thereof come not abroad, especially where the matter thereof is capitall or worthy death.

Libell what.

Extraordinary crimes, are those which have no ordinary punishment appointed them, but are arbitrarie at the Judges appointment, such as are Solicitors of other folkes wedlockes, and Maids chastities, although they misse of their purpose; such as of purpose cast myre, durt, or any like filth upon another, to the intent to disgrace him: such as, being with childe, of purpose cause themselves to miscarry: Such as keepe brothell and bawdy-houses, or other unlaw-

Extraordinary Crimes.

full company : Juglers, and such as carry about Snakes, and other like Serpents and trumpery to put men in feare: Such as hide and suppress Corne, to cause the price to be dearer: Such as either make, or use false weights wittingly ; for all which, because there is no proper punishment provided in the Law, they are referred to the punishment of the Judge, who is to punish them according to the quality of the fact, age, and understanding of the offender, and other circumstances according as he shall thinke good ; so, notwithstanding that he exceed not a convenient measure therein, neither stretch the same to death but upon some great and weighty cause, he is to be content with meaner punishment, as temporall banishment, whipping, or some moderat pecuniary mulct. For violating or defacing another mans sepulchre, Infamy was imposed, besides a pecuniary mulct to be divided betweene the Prince and the party grieved, but if any dig up the corse of the deceased, the punishment is death. If any, by feare of his office or authority, wring any money from any man, or exact more fees in any matter than he ought to doe, or cause him to marry, or doe any other thing he would not doe, the forfeiture is foure double the value of that which hath been taken, beside further punishment at the discretion of the Judge. Such as drive mens cattell out of their ground, or sever them from the flock or herd, with intent to steale them, if they doe it with a weapon like unto a Robber, are condemned to be throwne to wild beasts, otherwise are more lightly punished according to the discretion of the Judge. Such as in Judgement take money on both sides, or taking upon them the defence of one side, betray the cause, and take money on the other side, are infamous by law, and are punished at the discretion of the Judge. Such as receive theeves, and other like malefactors, are punished in like sort as the theeves or malefactors themselves are; especially if they have assisted them in their wickednesse : otherwise, if they onely knew it, & received them, they are more mildly to be punished, especially if the offenders were their kinsmen : for, their offence is not like theirs.

theirs, which entertain those, which are no kin to them at all; when as it is naturall for every one to regard his owne blood: and fathers are many times more carefull for their children, than for themselves; but if that hee that received them knew nothing of the offence, then is he altogether to be excused. Such as break prison, are to be punished by death, because it is a certain treason to break the Princes ward, but if they scape by the negligence of the Keepers, against whom the presumption lyeth ever in this case, they are more lightly to be punished. If any commit Burglarie, breaking up a doore or wall, with intent to doe a Robbery, if they be base companions, they are to be condemned to the Mynes or Gallies; but if they be of better reckoning, they are to be put from the ranke or order wherein they are, or to be banished for a season. Juglers and like Impostors, which goe about deceiving of the people with false tricks and toyes, hookes and such like, which insinuate themselves into other mens houses, with purpose to steale, are punished at the discretion of the Judge.

If any steale, or take away any thing out of the inheritance of another man, before either the Will be proved, or administration be taken; an action of theft lyeth not, because the inheritance, during the time, was counted no bodies, but he is to be punished by the discretion of the Judge; as, though it were the heire himselfe that did it. Cosenage, whereby a man craftily suppresseth some thing he should not, or putteth one thing in anothers place, to the deceit of him that hee dealeth withall, or corrupteth such wares which hee uttereth, or doth any other thing collusorily, which is called of the Law *Crimen Stellionatus*, (of a little vermin or creature called *Stellio*, much like to a Lizard, most envious to man) is censured by some ignominious & shameful punishment, or by disgracing the person, by putting him out of the Office, Place, or Order he is in, or by injoyning him some servile worke, or by banishing him for a time, or by some like punishment, at the discretion of the Judge. If any plough up a Mere balke, or remove any other marke

Crimen Stellionatus.

which hath accustomed to be a Marke or bound betweene ground and grounds, which anciently was counted reverend and religious among men, the offence is punished either by a pecuniarie mulct, or by banishment, or whipping, at the discretion of the Judge. Unlawfull Colledges, Corporations, and assemblies, gathered together to bad uses, as to eating, drinking, wantonneffe, heresie, conspiracie, are punished as publick Routs or Riots, otherwise at the discretion of the Judge: All these, before recited, are called Popular Actions, because, not onely he that is injured, but every other honest subject may pursue and prosecute the same.

*Publick
Judgements.*

Publick Judgements are such, which immediatly pertain to the punishment of the common-wealth for example sake, and are examined, tried, and punished by a publick order appointed by Law, the partie grieved, making himselfe partie to the suite, and following the same; the party accused in the meane while remaining in prison, or putting in suerties for his appearance, and the partie grieved for the prosecuting of the same. The chiefeft of which sort is Treason, which is a diminishing or derogation of the Majestie of the people, or Prince, on whom the people have collated all their power, which is punished with death, and confiscation of the Lands and goods of the offender, and the eternall abolishment of his memorie. The next is Adultery, which is violating of an other mans bed, whose punishment anciently was death, both in the man and in the woman, but after it was mitigated in the woman, shee being first whipt, and then shut up in a Monasterie: but by the Canons, other paines are inflicted. Under Adulterie are contained Incest, Sodomy, Baudery, and all the rest of the sins of that kinde. Publick force, is that which is done by a company of armed men, collected together, and the correction thereof is perpetuall banishment. Private, which is done without Arms, the paine thereof is the losse of halfe the parties goods, and the infamie of his name. Murderers and Poysoners, Witches and Sorcerers, the crime being proved,

proved dye the death : such as set mens houses a fire, are to be consumed with fire themselves : such as kill either Father or Mother, or those that are in the place of Father or Mother, or any that are of next a kin, their punishment is death ; and in case of the Father and Mother, beside the pain of death, the Parricide being first well whipt, so that the blood doe follow in good plenty, hee being sowed up into a sack, together with a Dogge, a Cock, and an Ape, is thrown into the depth of the Sea. Such as make false Certificates, forge false Wils, Depose false wittingly, suborne witnesses, take money either to say, or not to say their knowledge of that which they are demanded of in Judgement, corrupt Judgement, or cause it to be corrupted, interline, put in, or raze out any thing out of any writing, that the truth thereof may not appear as it is written, suppress Wils or Testaments, or other like writings, counterfeit other mens hands and Seals, open any mans Will yet living, and impart the secrets thereof to the parties adversarie, unseale such instruments or writings, as are left with him to keepe; bequeath unto themselves Legacies in an other mans Will, without his good will and privie; wash or clip gold, or sowder therein any corrupt metals, make base silver money; pretend themselves to be Noble men or Gentlemen, whereas otherwise they are but base persons; wilfully challenge unto themselves an other mans name, or Arms; cog and foist in womens labours or otherwise, false births, or adulterous children, in steed of true and rightfull heires; sell one and the same thing to two men, carrie about false Passports; use false Measures, or corrupt those that are true, in some cases, are punished by death, in other by banishment, imprisonment, or cutting off both or one of the hands of the offender. If any bearing any publick office, abuse the same to gain, and doth that for money, which he ought to doe for thanks, the Law ordereth, that the offender shall be called to account for his supposed bribery, and if hee be found guilty thereof, fineth him foure fold to the party grieved, and beside, decreeth him to be banished.

Such

Such as by ill devises and policies, raise up the price of corne, and other victuall, or get the whole sale of any merchandise into their hands, that they may sell it the dearer, are punishable at the discretion of the Judge, which according to the quality of the person and fact, reacheth sometimes to banishment, sometimes to death it selfe. If any take, purloine, or intervert to his own use any money dedicated to holy and publick uses, or cause the same to be taken, purloyned, or interverted; or if any take away any brasen table, wherein any publick Lawes are graven, or the bounds of any Lands are described, or blot out, or change any thing thereof, or covenantly pay in lesse money into the Exchequer, than by right he ought to have done, and hath not cleered with the Exchequer for the residue, is to be condemned in the three double of that which is the residue, and is beside to be banished.

If any, to get an Office, procure a number of hired voices, besides the losse of the Office he sueth for, his punishment is temporall banishment. If any steale away any childe, the body of any free-man, and sell the same away, or detein them against their will, the fault is death. If any slanderously charge an other with any false crime, or wittingly beare any false witnesse against him, or willingly give any wrong Sentence against him; or on the contrary side, dissembelth such faults as he knoweth, and colludeth with the adversary, or giveth over the prosecution of a crime hee hath undertaken to follow, untill he have leave granted him by the Judge, to desist from his accusation, the same is to be punished with the like kinde of punishment, that hee would have the other punished by, unless he be acquitted therefrom by the Princes pardon; or that the Adversarie be dead. In publick Judgements where the Offender appears not, Proces is to be awarded out against him for his appearance, by a certain day to cleere himself; at which day if he appeare nor, an Inventory is taken of his goods, not to the intent they should be spent, but that they should be reserved to his use, if hee returne again
within

within a year, and cleere himselfe ; otherwise they become the Exchequers for ever, how innocent soever the party afterwards appears to be. If the Offender be present in Judgement, and deny the fact, he is to be confuted by witnesses, or other prooffe; or if there be just matter of suspicion, to be put on the rack ; which, albeit in matters of lesse danger, is great cruelty, yet in great and horrible crimes it is necessary : If the Offender have either confessed the crime, or be convicted thereof, then it followeth, that the party convicted, be punished either by death or otherwise, according to the quality of the person, or condition of the offence. Punishments by death are foure, Hanging, Burning, Heading, and casting the Offender to be devoured by wilde beasts, amongst which may be reckoned, Exile or Banishment, for that it takes away a mans liberty, and bereaves him of his country, which to every good subject, is as dear unto him as his life it selfe.

Punishments which did not inflict death, were many, & such as it pleased the Magistrate in his discretion to appoint. The Law having passed upon the Offender in such sort, as should be to the losse of his life, liberty, or countrie, his goods became forthwith forfeited to the Prince, such (I mean) as are of value : but for the other, the Law alloweth them the prisoner, for his maintenance during the time of his imprisonment, and satisfying such fees as are due to the Officers thereof ; which hath place where the offender hath no children, otherwise the one halfe of his goods cometh to his children, unlesse it be in case of Treason, where all is confiscated. They are also held for convict and guilty, which either upon a guiltinesse of minde make away themselves before Judgement, or stop their Adversaries with a bribe, that they shall not follow the Law against them, and their goods are no lesse confiscat than the others. But it is otherwise in those which are banished for a time, or to a certaine place, or in such as the Law having once passed upon them, are either in their life, or after their death, by the bounty and mercy of the Prince restored ; in

which ease they recover Goods, Name, and Honour: the body being executed, the carcasle, for the most part, is granted to buriall, unlesse it be for matter of Treason, or other such like offence. If any have beene unjustly condemned, either by the iniquity or unskilfulnesse of the Judge, the law alloweth him an appeale, that is, a provocation to a higher Judge, that he may hear the cause anew, and reforme that which is judged amisse into better: and if the higher Judge finde the partie grieved hath well appealed, he is to reverse the former sentence, otherwise to send the Offender back to the Judge, from whence he came, there to receive his punishment: yet some persons there be, from whom no appeale lyeth, as from the Prince, or Senate, because they represent the Prince; neither may hee appeale, which hath renounced his appeale. Appeales are made from lower Judges to higher, and from him that is Delegated, to him that did Delegate: Appeales are to be made within ten dayes after sentence given, or within ten dayes after the Notice is come to the party against whom the Sentence did passe, unlesse there attend thereon a continuall griefe, in which case, a man may appeale so long as the griefe indures: the time to aske Dimissorie Letters, is thirty daies from the Sentence given; the time to present the same to the Judge, is at the discretion of the Judge from whom; the time of prosecuting the same is a year, or, upon just cause, two years; in which time, if the sate be not ended, the cause is deferred, and to be sent back unto the Judge, from whom the Appeale was first made: while the Appeale hangeth, nothing is to bee innovated, because by the Appeale, the Judges hands are, as it were, bound: but if the former Sentence were voyde by law, (as in sundry cases they are) then there needeth no Appeale; for such Sentences never passe into a case judged. Appeales in criminall cases, cannot be justified by a Proctor; but it is otherwise in Civile Causes. An Appeale in one cause doth not exempt the party appellum from his owne Judge, in other causes: If the appellant die during the time of the Appeale, and leave no heire

heire behinde him, the Appeale ceaseth; but if he leave an heire behinde him, and the matter of the Appeale concernes none but himselfe, he is not to be compelled to follow it, for every one may renounce his owne sute: but if it concerne the Exchequer, or any other body, then may hee be compelled to follow it.

The Exchequer is the Princes Treasurie, and the patrimony of the common-wealth, and hath many and singular prerogatives, which private men have not. Such as are taken captive by the enemy, become their servants, who have taken them, unlesse either they escape home again themselves, or be ransomed by their friends; in both which cases, they recover all right and priviledges they had in their owne common-wealth before. By the Law, all Subjects whatsoever, are bound to serve the common-wealth in warre; in so much that if any, being prest, withdraw himselfe, or his childe from it, he is to be counted as a rebell, and for his punishment, is to be banished, and mulcted or fined in the greatest part of his goods. As the priviledges and rewards of Souldiers were many to encourage them to vertue and manhood; so their shames and punishments were great, to feare them from cowardice and vice: But among the rest of the priviledges of Souldiers, the old Souldiers were the greatest. Of Subjects, some dwelt in Shires, and lived after their owne Lawes, and yet nevertheless were made partakers of the honours of the Citie: some other were inhabitants onely in the common-wealth, and had onely a house in the same place to dwell in, and had no right to bear office: some other were strangers brought in, which were ruled by the Law of them among whom they dwelt. Amongst those that dwelt in Shires, the chiefest Magistrate was he whom they called *Decurio*, who was not sent by the people of Rome thither (for he was a Magistrate of Magistrates) but elected by the people there; and his office was, to keepe the treasurie of the Countrey to provide victuall, exact tribute, &c govern the state there, in maner as our Sherifes doe here: His office was onely

annual, lest by liberty, and lust of government, and continuance thereof it might grow into a tyrannie. Such as are Subjects, are to serve the common-wealth in such offices, places, and services, as their abilitie is fit for, and the necessitie of the common-wealth requires. The services of the common-wealth were of three sorts; Patrimoniall, such as belong to every mans patrimony to performe, which stood chiefly upon payment and charges, which were to goe out of every mans inheritance towards the performance of such burthen as lay upon him by law, custome, or command of him that had power thereto: Personall, which were to be performed by the care and industrie of the partie and his corporall labour, without expence of his purse. Mixt, which required both care of the minde, and labour of the body, and expence of the purse, and are imposed as well in consideration of the thing, as the person, which every subject is to undergoe, unlesse by the Law, or by the indulgence of the Prince they are excused; as some are excused by reason of old age, some by young age, some for their dignity, some for their calling, some for their state of body, some for that they serve in the necessarie services of the common-wealth at home, or abroad, as Embassadours do, some for that they are in necessary places of services for Gods Religion, as cathedrall Churches, and other Churches are; some for that they are of good and necessary places for Seminaries for the common-wealth, for learning and such other employments, as Colledges, Societies; and Schooles of learning and nurture are. Legates and Embassadours had immunitie from all publick services, not onely the time of their embassage, but also two years after their returne; They were called Legates, in that they were chosen as fit men, out of many; their person was sacred both at home and abroad, so that no man might lay violent hands on them without breach of the Law of Nations. Such as are Magistrates of Cities ought so to governe, that no negligence may bee justly imputed unto them, otherwise they are to answer it, and that when their

their office is expired, they give up a just account, both of what they have received, and what they have layd out, and pay in the residue, if there bee any. Governours of Cities, together with the consent of the Burgessees thereof, may set downe such orders and decrees, as are for the benefit and well ordering thereof, which are to be observed of all those which are Inhabitants thereof, and being once well and duely set downe, are not to be reversed, but to the good of the Citie or Commonalty. New publick workes, such as are good for the Common-weale, every one may make without the leave of the Prince, unlesse it be done for æmulation, or cause of discord; but for old workes, in which stands the security of the Common-wealth, as Castles, Towers, Gates, and Wals of Cities, nothing is to be done or innovated in them, without the Princes warrant; neither is it lawfull for any man to grave his name in any publick Worke, unlesse it be his, at whose cost the worke is done. Faïres are authorized by Princes onely, and are invented for trade of merchandize, and uttering of wares, which Country-men have cause to buy, or sell: and have their priviledges, that no man in any Faïre can be arrested for any private debt; they were called *Nundina*, because that among the *Romans*, they were anciently holden in one place or other upon every ninth day. Hee that for ten years space intermitteth to use his Faïre, loseth the priviledge thereof. If any make any promise to a Citie or Common-wealth, to do any thing upon certain cause, as that hee might be made Consul, or that he would repair some part of the Citie that was burnt, he shall, by the Law, be compelled to performe his promise; for it is not meet that such promises should be satisfied with repentance. Such as profess liberal Sciences in any Common-wealth, whereby youth is instructed, & brought up to knowledge, or be School-masters, or Professours of Physick, or be Midwives, Notaries, Auditors, or Casters of accounts, or Registers, the Law alloweth, not only a competent stipend in recompence of their skill & paines, but also affords them means, how the same may be

recovered if it be denied. But as for Philosophers and Lawyers, the Law hath appointed them no stipend, not because they are not reverend Sciences, and worthy reward or stipend; but because either of them are most honourable professions, whose worthinesse is not to be valued or dishonoured by money: yet in these cases many things are honestly taken, which are not honestly asked; and the Judge may according to the quality of the cause, and the skill of the Advocate, the custome of the Court, and the worth of the matter that is in hand, appoint them a fee answerable to their place, as also to such as are Interpreters betweene parties in matters of traffick, when one understands not an others language.

CHAP. II.

SECT. I.

The second Volume of the Civile Law, is the Code, which is distributed into twelve Booke. why the Code is so called.

THe second Tome of the Law, is the Code, and stands in twelve Books, whereof eight, for the Titles, follow in a manner the order of the Digest, a few titles onely excepted, which are added, besides those of the Digest; but as for the foure other, which are the first, the tenth, the eleventh, and the twelfth; although the subject they treat of be named in the Digest; yet the things which are there named, are not handled in the Digest; and therefore will I passe over those eight other, lest happily I might seeme to doe one thing twice, and therefore will I referre the Reader over to that which hath beene said of them before, in the handling of the Digest; for they are almost twinnes of one mother; so that whosoever knowes the one, shall with no great difficulty discern the other, and

and come to the other foure; yet not mentioned there: But yet before I lay open the matter thereof, I will in a word or two shew why this Volume of the Law is called the Code, who is the author thereof, and out of whom it was collected, what moved the author, after so many learned titles set downe before, of such things as are in the Digest deduced, by such a number of worthy Lawyers (as the Lawes of the Digest themselves doe by their inscriptions shew; for every law, carrieth with him in his forehead, the name of his Author) to make a new flourish of the same, and what the knowledge of the Code doth conferre unto a Student or practiser of the Law, more than the knowledge of the Digest doth.

The Code therefore is named of the word *Caudex*, that is, the trunke or timber of the tree, from which the barke of the tree is pill'd or pull'd off, of which men anciently used to make writing-tables, artificially binding them up into the forme of a booke, and using them for bookes, before the use of paper or parchment was knowne; insomuch, as many of these tables being bound together, they were called a Code, or booke: besides, whereas the ancient Lawyers before *Justinians* time, used to write their pleas and answers in scroules of paper or parchment, *Justinian* himselfe first put them in a booke, and therefore termed them by the name of a Code.

Why this Tome
of the Law is
called the Code.

The Code it selfe is compiled of the answers of 36. Emperours, and their wise Councell, whereof sundry were learned and skilfull Lawyers, as the storie of that time doth shew, and the lawes themselves doe name some of them, as that most excellent and famous man *Papinian*, and some others; that is, from the dayes of *Adrian* the Emperour, unto the age of *Justinian* himselfe.

What the
Code is.

The cause that moved *Justinian* hereto, was, that in the Digest hee found not every case decided, that falls out in common use of life (for how is it possible, when as every moment there falls out new matter, for which former lawes made no provision?) and therefore thought good to sup-
plic

The reason
which moved
the Emperour
to compile the
Code.

plie that by new Lawes, which he found defective in the old: so that the multiplication of those titles grew not, that the Emperour had any meaning, to fill the world with multitude of Lawes, for hee had found the inconvenience thereof already, and therefore had repealed and abolished so many thousand of old Lawes, as he had; but it came rather of that, that the multitude of causes were so many, that every day there fell out some unexpected thing that was never heard of before: beside notwithstanding the carefulnesse of the Emperour himselfe, and his great Lawyer *Tribonian*, and others, whom he used for the selecting and choosing out of the purest, best, and most agreeing Lawes among themselves, out of that indigested heap of Lawes he then abolished; yet they were not so quick sighted, but in that great worke, sundry *antinomies* or contrary Lawes past them, which had need to be expounded and amended, and the Authors to be recited. Further, sundry of ancient Lawes were so subtilly written, that there was more wit than profit in them; so that it was expedient, the Emperour should explain the same, & putting all subtilty aside, give a right sence unto the Law. Lastly, whereas many things were delivered by them briefly, and therefore obscurely, the Law-giver in his Princely wisdom, set out the same in other Lawes more plentifully and distinctly, all which were the chiefest causes, why the Emperour set out the booke of the Code.

*The difference
betweene the
Digest and the
Code.*

The Code neither in style, nor in methode cometh to the perfection of the Digest, as that which for the style is a barbarous Thracian phrase Latinized, such as never any mean Latinist spake; whereas notwithstanding the style of the Digest is very grave and pure, and such as doth not much differ from the eloquentest speech that ever the *Romans* used; and for the methode, it hath no particular disposition, other than such as is borrowed of the Digest itselfe, and otherwise is rude and unskillfull, where it doth recede from the same: yet doth it not lack his good use, for to such as follow the practice of the law, the know-
ledge

ledge of the Code is much more expedient than the knowledge of the Digest is, for that the lawes of the Code doe determine matters in daily use of life; which, because they are a like in all ages (for the same is evermore upon the stage, the persons a little altered) it cannot be but the learning thereof must be very profitable and expedient for the Common-wealth, whereas notwithstanding the learning of the Digest stands rather in discussing of subtil questions of the Law, and enumerations of the variety of opinions of ancient Lawyers thereupon, which have more commendation of wit, than benefit toward the common-wealth in them; but hereof hitherto.

S E C T. 2.

The Argument of the first Booke of the Code.

THE first Booke of the Code treateth of Religion, and the Rites and Ceremonies thereto belonging, whereof I said there was no speciall Tractate in the Digest, saving that it devideth the publick right into that which concerns the Church, and Church-men, and the Magistrates of the Common-wealth, prosecuting the later branch thereof onely, and omitting the first, because out of that Heathenish Religion, which was used in those ancient Lawyers dayes, and those superstitious Rites, whereof their Bookes were full, nothing could be taken that might serve for our Religion: whereupon he instituted a new discourse thereof in the Code, beginning first with the blessed Trinitie, one in essence, and three in person, wherein he sets downe a brieve summe of our Christian faith, agreeable to the doctrine of the Prophets, and Apostles, and the foure first generall Counsels, the Nicene, Constantinopolitan, Ephesine, & Calcedon, forbidding any man publickly to dispute, or strive thereabout, taking occasion upon the Nestorian heresie, which not long before had sprung up, and had mightily infected the Church, which *Justinian* by this confession of Faith so published to the whole world, and a penall Edict

F

joynd

joynd thereunto, hoped to repressle : After hee hath set downe a full and sound confession of the Christian faith, conformable to the Primitive Church ; next hee addeth a title of the holy Church it selfe , and of her priviledges, which either concerne Ecclesiasticall mens persons themselves, or their state and substance, or the actions one Ecclesiasticall man had against an other, or with, or against Lay persons : where also he prosecuteth the degrees of Priests, or Ministers, their offices, orders, and how the same are to be come by, (that is, without bribes or Simonie, or other worldly respect, save the worth of the person onely) and the rights of holy places. [Priests in the Law are called, from the Latine, *Sacerdotes*, either because their office was *Deo sacra dare*, to sacrifice to God ; or else, because they were consecrated, and as it were, severed from the rest of the people, and given up to God : they were also called *Elders*, answerable to the Greeke *Πρεσβύτεροι*, either for that they were so in age,* (the Law having provided, that no man should be promoted to the dignitie of a Priest, till hee were 35 years old) or else, because they ought to be such in manners and carefull carriage of themselves.] Amongst Priests or Ministers, Bishops have the first place, who are, as it were, the † Overseers and Superintendents of the rest, so called of their watchfulnesse, care, labour, and faithfulness in teaching the people, and doing other duties, which they owe unto the Church. [The lowest degrees of men in the Ecclesiasticall Hierarchy, were the Clerkes, as the word *Clericus* is restrin'd to a narrower acception. For in the generall, it is most properly applyed to all degrees of the Clergie, and is a terme contradistinct to the *Laitie*: and they are called Clergie, from the Greeke *κλήρῳ*, *quia de sorte Domini sunt, vel quia Dominus sortis est & pars Clericorum*, either because God is their portion and lot, or because they are his ; as *Papias* hath observed.] To Bishops, Priests, and other of that ranke, did appertain the care of Hospitals, whereof some were for Orphans, some for Infants, some for impotent and diseased persons, some for

* *In Authent. de sanct. Episcop. & Presbyterum, Collat. 9.*

† *Βασίλειος.*

for poore people, some for strangers, and other like miserable persons; and therefore together with the title of Bishops and Clerks, is joyned the title of Hospitals, or Almshouses. In place next after the Bishops themselves, comes their power and audience; for albeit the chiefeſt office of a Bishop, is to instruct the people in the doctrine of the Word, and in good example of life: yet forasmuch as all will not be obedient unto the Word, neither brought by the perswasion thereof to good nurture, and to be kept in order, and the eminencie of the degree, wherein the Bishops are placed, is not sufficient to keepe the people in obedience without some power and jurisdiction, and because the Church it selfe is the mother and maintainer of Justice, therefore there is by the Emperour him selfe, and his predecessours, as many as professed Christianity, certain peculiar jurisdictions Ecclesiasticall, assigned to the Bishops, more worthy than the Civile, over persons and causes Ecclesiasticall, such as touch the Soule and Conscience, or doe appertain to any charitable or godly uses: and over the Laitie, so farre forth, as either the Laitie themselves have beene content to submit themselves unto their government, that is, so farre as either it concernes their Soules health, or the outward government of the Church in things decent or comely, or that it concernes poore and miserable persons, such as widowes, orphans, captives, and such other like helpelesse people are, or where the Civile Magistrate cannot be come by, or doth voluntarily delay judgement; in all which, anciently a Bishop was to performe double faith and sanctity; first of an uncorrupt Judge, and then of a holy Bishop. But in many of these matters in these dayes, the Laitie will not suffer themselves to be controll'd, and therefore hath taken away most of these dealings from them, yea, even in charitable causes. Immediately followeth a title of Hereticks, Manichees, Samaritans, Anabaptists, Apostataes, abusers of the Crosse of Christ, Jewes, and worshippers of the host of heaven, Pagans, and of their Temples and Sacrifices; whom the

Bishop is not onely to confute by learning, but also to suppress by authoritie, for he hath not the spirituall Sword in vaine. The Hereticks, Jewes, and Pagans shall not have Christian men and women to be their servants: that such as flie to the Church for Sanctuarie, or claime the ayde thereof, shall not be drawne from thence, unlesse the offence be haynous, and done of a pretended and purposed malice, in which case no Immunity is to be allowed them, but wicked people are to be punished according to their desert, agreeable to the word of God it selfe, which would not have his Altar to be a refuge unto the wicked: And so farre of that part of publick right, which appertaineth to the Priests, or Ministers, and their Function, which was omitted in the Digest, but prosecuted in the Code. Now it followeth, that with like brevity I run over the three last Bookes of the Code, which themselves were rather shadowed in the Digest, in the title of the right of the Exchequer, than in any just proportion handled.

S E C T. 3.

The Argument of the 10. Booke of the Code.

THe first therefore of them setteth out, what is the right of the Exchequer, and in what things it standeth, as in goods excheted, because there is no heire unto them, or that they are forfeited by any offence worthy death, or otherwise. How such as are in debt to the Exchequer, and their suerties are to be sued. Of the right of those things which the Exchequer sels by outcry, where he that offereth most, carrieth it away, and how the same may be revoked, unlesse all rights and ceremonies be solemnly performed therein. How things that are in Common betwene the Ecchequer and private men, may be sold, and that the Exchequer evict nothing that it hath once sold, for that, it were a thing against the dignity of the Exchequer, and would terrifie private men for bargaining with it. Of those that have borrowed money out of the publick receipts,

ceipts, and what penalty they incurre, if they repay it not at their dayes covenanted, sometimes the forfeiture of foure double of that they have borrowed, sometimes danger of life it selfe. That in cases of penalties, the Exchequer be not preferred before such as the Offender was truly indebted unto, but that they be first served, and then the Exchequer have onely that which is left. What usurie the Exchequer may take, that is, for money lent, and not for such summes as grow out of Mulcts and Penalties. That such sentences that are given against the Exchequer, may be retracted within three years following, although ordinarily all other Sentences are irrevocable after ten dayes; neither can be reformed after that time, either by rescript of the Prince, or by pretence of new prooffe. Of the goods of such as excheat, by reason they have made no Will, and of the goods of Incorporations, that is, of such as dye without heires, that they come not to the common banke of the citie, but that they excheat unto the Prince: Of Promoters, by whose informations any goods are confiscate, either by reason of the goods themselves, for that they are adulterine, or that they are prohibited to be exported or imported, or upon some other like cause, or by reason of the persons that have offended, and crimes wherein they have offended; and their punishment, if they give in any wrong information, or other than such as they are bound unto by vertue of their Office: and that they give no information in, but by advise of the Attourney of the Exchequer, and that they make no information against their Lord and Master, but in case of Treason. That it shall be lawfull for no man to make sute unto the Prince for those things that are confiscated unto the Exchequer, as though it were more Honourable for the Prince to bestow such things on his Courtiers, than to keepe them to himselfe: and therefore, such as are the Princes Secretaries, his Masters of Requests, and others that are of his remembrance, are forbidden to make any Acts, Instruments, or other writings hereof, unlesse the Prince of his owne motion, and at no other mans sute, will

or command the same : Of such as put themselves into the Exchequer, upon any confession made against themselves : Of such, to whom the Prince joyntly hath given any farme or like thing, that where one of them dyeth without an heire, the other may succeed him: Of Treasure found, that the Exchequer be made acquainted with it ; and that if it be found in a publick place, halfe goeth to the Exchequer, the other to the finder : but if it be in a private place, then halfe to the Lord of the soyle, and the other to the finder : Of provision for Corne, and such other like : Of Tribute, which was an ordinary payment : Of imposition and super-impositions, which were payments laid upon the subject above ordinarie taxe, for some present necessity, to which charges, the ordinary taxe doth not suffice ; which was not to be done, but upon great and urgent cause, by a Councell called together, and with the consent of the subject : Of Collectors of the Subsidies, and in what manner they are to be collected and brought into the Exchequer, and of the punishment of those that in the collection thereof extort more than is due : that it shall be lawfull to distress for Tribute unpaid : that such acquittances as the Exchequer shall deliver unto the accomptants, shall be their full and finall discharge : and that the Subsidie Bookes shall every quarter be sent up into the Exchequer with the account of the Collectors, that thereby it may appear how much every man hath paid or oweth unto the Exchequer : and that nothing may be done for the grievance of the poore, or the favour of the rich : Of the Booke of accounts of yearly gifts that commonly Subjects present unto the Prince at New-years-tide and otherwise, and that they be divided from the accounts of the Exchequer : That no man be freed from the payment of Tribute : Of spending out such ancient gain, and other like provision, as is laid up in the common store-house, and making provision for a new, and compelling the subjects, such as have plenty of such grain, if it happen to be vined and mustie, to buy the same, that the whole losse thereof may not lye upon the

Ex.

Exchequer: What pension such Mannors as the Prince hath given or released from payment of Subsidies shall give, and that no man be so hardy to leg such a matter of the Prince, lest the revenues of the Exchequer be thereby diminished: Of Mannors that have beene translated from the payment of one kinde of provision to an other, or that have beene in their taxation over-rated: Of Brasse that Minerall Countreies are to yeeld, or money in lieu thereof: Of Controllers, whose Office it was to cast over again such accounts as were brought into the Exchequer, or to examine them a-new, lest perhaps, there might be an error in them.

And so farre as concerning those things which doe appertain to the account of the Exchequer, or the patrimony thereof, or such pensions or payments, as are due unto the same. Now followeth the other part of this tenth Booke, which containeth the burthens, duties, or offices imposed on the subject by the Exchequer, and what excuse the subject might alleage in this behalfe.

Burthens or duties, were either personall, as places of Honour, which were not to be continued from the father to the childe; or they be Patrimoniall, which are charged upon mens inheritance, either for the good of the commonwealth, or to enrich the Exchequer against dangers that are like to ensue: which are undertooke and performed either by those which are of necessity to obey that which is enjoyned them, or by those which offer themselves voluntarily thereto, which seldome happeneth in patrimoniall charges: but in matters of Honour and personall services, it many times commeth to passe, that men excuse not themselves from bearing of Offices, or doing of personall services, although they have an immunitie from them, either by the grant of the Prince, (which is to be understood of extraordinary service only, and not of ordinary) or by the benefit of the Law; for by the Law men are many times upon just causes excused from Personall services, so it be not from such services as no man can excuse himselfe from; such as are Postings and carriages, when the Prince passeth

passeth by, or the Tenure of his Inheritance doe so require it, and the erecting and repairing of Bridges, Wayes and Walls, the provision and carriage of Corne, and other like kinds necessary for the maintenance of the Princes house. Men are excused either generally from all kinds of services, or particularly from some : as all Minors, specially such as are Students in any famous University, whilest they give themselves there unto their booke, are excused from all Personall services, but not from Patrimoniall services; as also all old men of the age of seventy years and upward, all professours of Liberall Sciences, whereby the common-wealth is benefited, all professors of Physick, Grammar, Oratorie, or Philosophie, so they be allowed by the Magistrate and seven skilfull men, in the profession which they make shew of, and be not *Supernumerariis*, or above the number of those that are to be allowed, in which number are neither * Poëts nor † Auditors : they are also excused, which upon just cause are dismissed, either out of the Army, or out of the Schooles, either for lack of health, or that they are so wounded, that they can neither serve in warre any longer, nor longer indure studie, which are so to be understood, that they yeeld excuse from Personall services onely, and not from Prediall.

Those things that yeeld excuse in part, from Personall services are these; the Renting of the Princes custome, the baseness of the persons state, not fit to bear any Office of credit, infamie, banishment, an amotion from a mans place and degree, feminine sexe, which are to undergoe such Offices onely, as are agreeable to their sexe. Embassages imposed upon any by the Prince and his Councell, which hath immunitie also of two years after their returne, if the Em-

* Poëte nullā
immunitatis
prærogativā
juvantur. Cod.
de Professorib.
l. 3. lib. 10.
But the Inter-
pretation is
more mercifull
than the Text.
For the Glosse
saith, Poëte
hoc ipso quod
Poëte immuni-
tatem non ha-
bent, non quod
eam Divini
Spiritus non
mereantur; sed
quod lex defi-
cit.

† The Law hath it: *Non etiam Calculatores* : l. 4. De Proff. & Med. lib. 10. Cod. And ff. de Excu : Tur. l. Σπάρτα Μυδὲ χαλκιδά τοις (ὡς διαψιφιστὺς λέγουεν) ἔχεν ἀλειτο-
γῶσιαν λέγουσιν αἱ δεῖαι διαψίφεις, where the Law expoundeth *Calculatores* by διαψι-
φιστὺς, that is, saith *Briffon* and the Glosse, *Qui Artem numerandi docent* : answerable to
that which *Cujacius* hath noted out of the βασιλικὰ. Οἱ ἑρπίζου ἡμᾶς ἐκδιδοῦσιντες,
and then it may be thought, that the Law heere meaneth by *Calculatores*, those that taught
to cast an Account, Ciphering-Masters.

baſſage

passage were into places beyond the sea, or into any farre country, not if it were into any country neere at hand. Skill in any manuell Art or Mysteries, to the intent that they may have both time to learne their Arts, and so become the skilfuller in the same, and also have more alacrity to teach others in their Mysterie. That care be had, that such bee chosen to office, that be of the worthier sort for their vertue and place, and the richest for their state : that no man be chosen to office for envie, and if any be, and the same be proved, he that did chuse him thereto is to be fined, and to pay the expences of the sute, unlesse he which is chosen die within a short time after the choise, then his successors are not bound thereto. Further, men are excused, if being in one Office, they are chosen unto another, to the intent, they may the better execute and performe that office they have in hand : Such as are Remembrancers, which make Bookes of what is due to the Exchequer, and what is brought in, Auditors, receivers, Tellers, Granarers, Weighers, such as weigh and try such gold, as is brought and paid into the Exchequer; Collectors, that is, such as gather up the gold that is due in the Provinces to the Exchequer, and send the same over into the Exchequer, who are in no case to hold the same longer in their hands than the Law alloweth them, much lesse to turne the same to their owne use, without great offence to the Prince and common-wealth : the like is for a Crowne of gold, that is, of such gold that is put in Crownes, and offered to the Prince upon any publick gratulation, or any exployte that hath bene happily atchieved.

Justices of Peace, which are distributed by countries, for the more quiet and peaceable government of the same, whose care was to seeke out theeves and malefactors, and to foresee that the country-people did make no mutiny, by reason of the Taxes and Subsidies that were levied upon them : that for gold, there might be paid silver ; and again, silver for gold into the Exchequer, so that the value thereof were made equall. Usurers, although they have no pos-

sessions, yet they are no lesse bound to all Patrimoniall or Prædiall charges, than if themselves had Lands and Hereditaments, although, for their infamie, they are excluded from all Personall charges that are of credit.

S E C T. 4.

The Argument of the 11. Booke of the Code.

THE eleventh Booke proceedeth in the enumeration of other vocations, that are exempted in personall services of the common-wealth, besides those that have beene named in the tenth Booke: as Masters of ships and Mariners, which served to bring in any Merchandite or provision for the Princes household, out of forreine Countries into the Princes store-house: yea, although they were private mens ships, which were employed to that service, so that if a private mans ship were laden with any publick provision, there could not any other private burthen be imposed upon him: for that, if the ship perish by shipwrack, by reason of the private burthen that is put therein above the publick charge, then he is to answer the losse thereof unto the Exchequer, other wise than in the case of private men, who are themselves to bear the losse of those things which are exported or imported; neither can they make gain of privat mens shipwrack, or of those things which are cast out into the sea, to ease the lading of the ship, but are bound to restore it to the owner, under pain of confiscation of their goods by the Temporall Law, & excommunication of their persons by the Ecclesiasticall Magistrate. Adde to this, Myners or Metallers, & the governours of the same; gatherers of Muskles & other like shell-fish, with whose blond, either Purple is made, or out of which Pearles are taken: which colour Princes onely might use, as also velvet and cloth of gold; neither was it lawfull for any man (under the degree of the Prince) to wear the same, saving onely women in some sort, for that such ornaments are fitter for women than men. Joyns to these Monetaries, which served to coyns

coyne money, Wharfe-mech or Car-mech, which with their owne cattell carried or conveyed things, which belonged to the Princes Treasurie. The like priviledge had they which made Armour for the Princes Armorie, as Spears, Brest-plates, Darts, and such like; or made Bridles, Girdles studded with pearle or precious stone unto the Court, for the Kings household, who onely were allowed to wear the same. Such as had the care and government of any Corporations, as the Princes Bakers, Vintners, Paper-sellers, Money-changers, professors of Liberrall Sciences, specially in Rome, and Constantinople, which after the seate of the Empire was translated thither, had all the priviledges of old Rome, saving the Ecclesiasticall primacie, for which, notwithstanding there was long dissension betwene the two Cities.

Next after Rome and Constantinople, * Berytus a chiefe Citie of Syrophanicia had great priviledges, for the famous Universitie which was in the same, and such Provinces or Countries as served the same, or any of them, with yearly provision of Corne, Oyle, Beefe, Mutton, Porke, and such other like victuall: which provision was to be distributed among the poore and impotent of the cities, and not to be given to stout and valiant beggers, which are able to get their living with their owne hands, and therefore were to be compelled to worke. The Aldermen or Governours of Cities, for that they are employed in matters of greater services, yet none of them were to be called to any office before he had beene even with the common wealth; if happely any of them were in debt to it; neither were they or any of them excused more than from personall services, for in prediall duties, they paid every one according to his rate. But as for Enterlude-players and houses of bawdry, they had no exemption at all, but paid double charges to the rest. Of Husband-men, some are servants, as Copy-holders, others are free, as Free-holders, who notwithstanding themselves are, as it were, bound unto the soyle, and are rated in the Subsidie according to their Acres; and

* Nullius rei indiga, as Patricius barbit. In the Emperours dayes it was much renowned for the study of the Law, and is therefore joy-ned by him in priviledge Cum Regis urbibus, and called Pulcherissima Civitas, & Legum nutritrix in Proem. Digest. § Hec autem. And for this cause Impp. Theodosius & Valens. AA. eam urbem Metropolitano nomine ac dignitate exornarunt, Cod. De Metrop. Beryto l. unic. lib. 11.

if they have no Land, then according to the head or number of their household; which notwithstanding, at this day, is taken away; and these, as well pay rent to the owners of the ground (wherein notwithstanding, the Landlord cannot exact of them, or charge them above that which hath beene covenanted betweene them) as Tribute, and Head-silver to the common-wealth; for the declining of which, and avoiding of necessary services of the common-wealth, as no man can put himselfe under the patronage of any Noble man, so also they cannot be called from this service of the common-wealth to any other. Country-men, such as were addicted to the ground they tilled, although the ground were their owne, yet could they not sell it to any man, but to him that was of the mother-village wherein himselfe was. A Mother-village was that, whence all the villages round about were derived. Although all such husbandmen as dwell in any village, are to pay Subsidie for such goods as they possesse, or such lands as they hold; yet one neighbour is not to be disquieted or arrested for an other mans due: for that it is a thing unlawfull to trouble one for another, or not to cesse men indifferently, according to the value of their lands, and the worth of their goods. And therefore, the *Romans* in rating of matters of taxes, had first Cessers which rated men according to that which they thought their state to be: then had they Levellers or Surveyors, who considered the rate set downe, mended it, and made it even, easing such persons or grounds as were over-rated, and charging more deeply such others as were overlightly taxed, procuring that such grounds as were waste and barren; should be brought to tillage, and that the barren should be joyned with the fruitfull, that by such meanes the Prince might receive subsidie out of both. March-grounds, and such as lie in the bounds of any kingdom, serve for the maintenance of such Garrisons as are there placed for the defence of the Marches, and such as hold the said lands, are to pay a yeerely provision or pension for the same; as also the Princes pastures, woods, and forrests,

forests, which are let out upon a certain yearly rent, either for a certain time; or in fee farm: for ever, which in respect they pay an ordinary payment to the Prince, either in money, or in provision, are discharged from all other ordinary and extraordinary burthens. Publick things are those which appertain to the Exchequer, or to the Church, which may in like sort be rented out for a season, or forever, as the possession of the Exchequer may, so it be done to the certain benefit of the Church, and under such solemnities, as in this case are required, otherwise it cannot be let out but for 30. years, or for three lives. Fee farm is when lands and tenements, or other hereditaments are let out for ever, under a certain yearly rent in acknowledgement of the sovereignty thereof, belonging still to the first Lord, whereby both the right and possession passeth to the former in fee.

SECT. 5.

The Matter of the 12. Booke of the Codes.

THE third and last of these Bookes, treateth of the honours that the Exchequer giveth, of which the first and chiefest was the Pictorship, which anciently was a great dignity, but after became an idle name onely, and a burthen to the Senators, as in which, as their own charges they were to let out playes and shewes, and gave unto the Emperour, in consideration of his or their glebe land, a certain quantity of gold called *aurum glebe*, or if they had no glebe land, then offered they to the Emperour, an other peece of gold, called *folio aureo*, both which afterward were taken away. Next was the Consulship, which was not to be sought by ambition, but by scattering money among the people, but by cleere suffrages and desert. After the Consulship came in place the Constable, or Master of the Souldiers, and those which were called *Pariti*, for that their fathers had bene Senators, whose place under *Pariti* was equal to the Consuls, although they were in no

office and function of the common-wealth; and the other is not so much an administration as a dignity, as the Senatorship anciently was, into the which who that were admitted, were accounted as Parents to the Prince, and Fathers to their Country. Fourthly in place were the Princes Chamberlaines, who were adorned with sundry privileges, and had the title of honour: Fifthly followed the Treasurer, who was Master of all the receipts and Treasure of the Prince, publick or private, and of all such officers as were underneath him: Then the Pretorary, chief Notary or Scribe of the Court, who was called *Primicerius*. [To this purpose note, that the Ancients for want of those more proper materials, which Experience hath discovered to our times, were wont to write in waxen Tables, as may be observed out of the *Plinius* in an Epistle to *Tacitus*.] Note also, that upon occasion given for inrolling of their names, who bare any office or dignity, the use was, to set the highest degrees in *prima corda*, in the first place of the Table, from hence they were called *Primicerii*: therefore hee that is chiefe of any dignity or office, may be called *Primicerius*, according to that of *Phavorinus*: *Nequidquam in primis aut in ultimis, sed in medio*, the first of any order: hence it is, that we find in *Codice*, *Primicerius Aulae*, *Lectorum*, *Barbarorum*, &c. and for this cause, the Law here calleth the chiefe Notarie *Primicerius*. After him that was first Secretary, there was an other, called *Secundarius*, the second Secretary, and after them, other Clerks of the Council, who were not all in one degree, but some were first, some were second, and so in order, as their person, place, and time did require: Over whom was the Master of the Rolles, who now is called Chancellour, & such as were of the Princes privie Council, or Assessors of his privie consistorie, wherein he heareth Embassages, and debateth the greatest affaires of the State, and other weightie matters. The President or Tribune of the Schooles, where young men were trayned up to feats of Armes. The Martials or Presidents of Millicarie affaires: the Physicians of the Princes body,

Lib. 1. Epist.

* *Austin* calleth *S. Stephen Primicerium Martyrum*, and the Archbishop of Dole in his Hist. of Jerusalem called *S. Peter Primicerium Apostolorum*.

body, Constantine in old time honoured with the title of Earles, as he did the rest of his chiefe officers, but now they are without the dignitie of that title: The Earles of the Countreys who governed the Provinces or Shires whereof they were Earles: Professors of Law, and other sciences twenty years together, deserved by the Law to be made Earles. The Porters of the Court, and the Princes watch, which watched nightly for the defence of his body, the guard or protectors of the Princes body, & their Captain, amongst whom the chiefe were the Standard-bearers, as in whom the Prince reposed most trust, and used them chiefly in all matters of danger. Next unto the Chancellour, or Master of the Rolls, were the Clerks, and others that served in the Rolls, in which the decrees and rescripts of the Prince, the Supplications of the subject, and the orders thereupon set downe are recorded, laid up, and kept, as the Rolls of Remembrances, of Epistles, Libels, Ordinances, Gifts given by the Prince, and such like: besides such as serve the Prince, not in matters of learning, or warre, or the pen, or other like places above-named, but in actions of the common-wealth, and in publick offices either of peace or warre, and their Presidents or Governours, among whom are Post masters, to whom the care of the publick course doth appertain: the Treasurer of the Chamber, who hath the keeping of the privie purse, and such things as come to the Prince by the way of gift; the Master of the horse, his Queries and riders; the yeoman of the Styrrop, and the Princes footmen; the * Castellians or officers of the household, which were part of the Princes family, appointed for the inward services of the Prince in the Court, as his Tasters, Butlers, Wayters, Chamberers, and such other, and their Governours, Harbingers, which upon remove provide for the Princes lodgings; all which had sundry priviledges and immunities, for that they were all

castris devota, ut Præsumptores, Pincernæ, Vestitores, Pistores, &c. Cujacius hic, & Welsæbec in Oeconom. Juris pag. 425.

* They are called in the Title Castrensiæ. Cod. De Cast. & Minist. lib. 12. And these were Pars Regiæ familiæ Servitiis & Ministeriis Principis interioribus, in aula &

accounted.

† Schooles in the Code are Corpora five ordines officialium, hoc est, eorum qui munere & officio aliquo quod ad Principis Ministerium pertineret, fungebantur. Prat. Concerning these, see Panciroll, upon the Notitia Imperii. The Author whereof (Marian & Scot, if it be as Cujacius saith) reckoneth no more then tenne Schooles, but the Emperour maketh mention of eleven. Cod. de Locat. & Cond. l. fin.

accounted as Souldiers, as also the eleven Schooles for Heachmen, wherein sundry youtnes, under masters appointed for that purpose, were trained up, some in learning, some other in Militarie discipline, that they might be made fit for the service of the Prince and common-wealth, and had for their better education an *in small* allowance of the Prince; and from thence, when they were sufficiently instructed, or trayned up, were sent out to such services as they were fit for.

Of such as were attendants about the Prince, and were employed in his service, the chiefest of all were the Senators, and therefore are called in the Law, the Companions of the Prince, and have all the priviledges that Souldiers have. The second order was of them that were Knight-riders, which either did, or might serve in warre. In the third ranke were such as were in dignity. All may be compelled to serve in warre, which have neither just excuse, nor exemption, nor have any leave of the Captain to be absent, unless they be Merchant men, or be indebted unto the common-wealth, or obnoxious to the Law, for any crime they have committed.

Under the title of Militarie discipline is declared, how men are to be trayned up to the knowledge of warre, what oath is to be taken of such as are prest to be Souldiers, how they are to be distributed into bands, what use or benefit the common-wealth hath by them; what is their office, and how they are to be mustered, or else translated from one degree to an other, how they are to be judged, if they offend, what priviledges belong unto them; what stipend or wages is due unto them; as allowance of Corn, & the baking of the same into bisket, which was a kind of bread twice baked for the better durance of it, & the carriage thereof from place to place, so often as they hapned to remove; their livery or apparell, & the times of the delivery of the same, or money in steed thereof; lodging, and provision of salted meat the longer to endure: how long Souldiers may be absent from the campe, and who is to give them leave for absence,

sence, and what is the punishment of them, that without just cause be longer absent from the Army, than they have leave. Of young souldiers, and of their trayning up; of old souldiers, and of their priviledges: Provision for keeping safe the Sea coast, and ordinary high wayes of the Countrie, that such as journey may passe free without hurt or damage: of runagates out of the Army, and such as conceale them, and of either of their punishments: of the sonnes of such officers as have died in the warre; and of their preferment, if any be fit for it, that they succeed in their fathers office, or roome: Of the Sergeant Major, the Clarke of the band, and other such officers of the Campe, and of their office, reward, and punishment: Of places disposed of, for publick poasts, and carriages in high beaten wayes, and other by-wayes on necessary, and how the same and the Cattle are to be used, that is, that they be not driven forward with staves or clubs, but with whips onely: and that no poast-horse, or carriage be taken, but for publick use of poast-letters; to whom they are to be granted, and for what time: Of the Apparitors, Sergeants, Sumners, or Baylives: Of sundry great officers, and of their Scribes, and Registers, and of their trials: Of the fees of Advocates, and of the extortion of Apparitors. And this is the summe of those things which are specially contained in the Code, besides other things which it hath, common with the Digest; the knowledge whereof at this day, is not so necessary for the Civilian (who in this age hath little use thereof) as it is expedient for Councillours of State, and such as are called to place in Court, who may there-out marke many things to direct them in their place, as the variety of those things which are herein handled doth very well shew.

C H A P. III.

S E C T. I.

What the Authenticks are, and why they are so called.

THe third Volume of the Law is called the Authenticks, of the Greek word *αὐθεντικὴ*, either because they have authority, in themselves, as proceeding from the Emperors owne mouth, or that they are originals to other writings, that are transcribed out of them.

The Authenticks therefore, are a Volume of new Constitutions, set out by *Justinian* the Emperor, after the Code, and brought into the body of the Law under one Booke.

In the Authenticks, is not that order observed in the disposition of the Lawes, as is either in the Digest, or the Code, but as occasion was offered of any doubt, wherein the Princes resolution was necessary to every thing, so it is set downe without any other methode or forme.

The whole Volume is divided into * 9. Collations, Constitutions, or Sections; and they again into 168. Novels, which also are distributed into certaine Chapters.

They were called † Novels, because they were new Lawes, compared to the Lawes of the Digest, or the Code.

Of these Constitutions, some were generall, and did concerne all, who had like cause of doubt; some other were private, and did concerne only the place or persons, they were writ for, which I will overpasse with silence.

* In the Latine translation, for the Greeke text acknowledgeth not this division into Collations.

† *quod novissime promulgata sunt post Cod. Justin. Repetite Prelectionis*: and therefore the

Greeke calleth them *νέαις μετὰ τὸν νόμον*: so likewise the constitutions of the Emperours, which were newly published after the *Βασιλική*, were called the Novels of *Leo*, *Nepheron*, *Michael*. &c.

SECT. 3.

The summe of the first Collation.

OF the generall, the first title and first Novell of the first Collation is, that Heires, Feoffees, Executors, Administrators, and their Successors, shall fulfill the Will of the deceased, and within one yeare after his decease, shall pay his Legacies and Bequests: and if they be once sued for it, they shall forthwith pay that which is due upon the Will, (deducting onely a fourth part, which is due unto the heire by the Law *Falcidia*) or else, to lose such bequests, as themselves have in the Will.

That it shall not be lawfull for a Widow, comming to a second marriage, after her first husband is dead, to sequester one of her children from the rest, upon whom shee will bestow such things, as her first husband gave her before marriage, but that the benefit thereof shall be common to them all: Neither that shee convey it over to her second husband, or his children, and so defraud her first husbands children. And that a man in like sort surviving his wife, shall doe the like toward his first wives children, as concerning such Dowry as the first wife brought to her husband.

Of Suerties and Warranties, that the Creditors shall first sue their Debtors, and take execution against their goods, and finding them not payable, shall then take their remedy against the Suerties.

Of Monkes, that they build no Monasteries, but with the leave of the Bishop, who is there with prayer to lay the first stone: And that the Bishop shall appoint such an Abbot over the Monkes, as in vertue and in merit excels the rest: And besides of their habit, conversation, professions, and change of life, and who is to succeed them in their goods and inheritance.

Of Bishops and Clerks, that is, that Bishops and Clerks be of good fame, of competent learning, and age, and that

But the Emperour maketh no mention of this Rite; for thus saith the Law: None shall presume to erect a (Church or) Monasterie, till

the Bishop of the place, beloved of God, having beene made acquainted with it,

shall come, and lift up his hands to heaven, and consecrate the place to God by prayer,

- ✱ Πιεραμινθ εν αυτω το εικον της συμβολης σωτηριας (οαιου δε ε προσκυνητον ε η μων οτως συνεγν: and there erect the Symbole of our Salvation, wee meane, the venerable and truly precious Rood. In *Auth. De Monach. § Illudigitur. Coll. 1.* See also Novell. 123. & 131. And the like is commanded in the βασιλικα. Τον ε οικοδομειν βαλουρον Μορασιμου ομοισαν δειν πασι ε επιεκοπον ε ποιειν Σταυρωτηριον: Yet that this Ceremony of laying the first stone, hath beene of ancient use in the Greeke Church, may be observed out of their Euchologue, where it is said, that the Bishop, after some other Rites performed, εις εν τοις τοις εν ε το ελγον την ενυδα μιν δισπασμενον λειρι την ευχην ε, ε, την ευχην ποιει υπαλυσιν, ητα λαβων ενα ελ λειριον ε χαρτα ε ε αυτη συνεγν, αυτες ταις ιδιαις χερσι πιθισιν αυτον εν τοις εμειρι, λειριον. Εδμελιωσαν αυτην, &c. ε εως δι τεχνιται ε οικοδομειν αρχονται: standing in the place where the holy Altar shall be set, faith a prayer, which being ended, hee giveth the *1^{te} Missa* εβ, and then taketh up one of the stones, and having cut a Crosse upon it, himselfe with his owne hands layeth it upon the Ground-werke, then hee pronounceth the Εδμελιωσαν αυτην, &c. and so the work-men begin the building. That which followeth in the Euchologue, discovereth the forme and manner of setting up the Crucifixe, which the Law calleth σταυρωτηριον: the Reader may see εις φυλλ. ρμ. of the Euchologue. The like Ceremonies are used in the Latine Church at this day, as may be scene in their Pontificale, page the 181. of that which Clement the 8. set out at Rome, in the years 1565.

SECT. 3.

What is contained in the second Collation.

THe second Collation treateth of the Churches State, that the lands of the Church be neither sold, aliened, nor changed away, (but upon necessity, or that they be let to farme for a time, or upon other just cause) no not with the Prince himselfe, unlesse the change be as good, or better, than that which hee receiveth from the Church: and if any man presume contrary to this forme, to change with the Church, hee shall lose both the thing he changed, and the thing he would have changed for it, and both of them shall remaine in the right of the Church: And that no man give or change a barren peece of ground with the Church.

That

That Judges and Rulers of Provinces bee made without gifts: of their office, power, authoritie, and stipend, and that they sweare, they shall so sincerely and uprightly execute their office, as knowing they shall give an account thereof to God and the King; which oath they shall undergoe before the Bishop of the place, and the chiefe men of that Province, whither they are sent to be Judges or Governours.

Of the Masters of Requests, and their office, which offer to the Prince suters Petitions, and report them back from the Prince unto the Judges.

Of wicked and incestuous Marriages, and that such as marrie within those degrees, forfeit all that they have unto the Exchequer, for that when they might make lawfull marriages, they rather chuse to make unlawfull marriages.

S E C T. 4.

The Argument of the third Collation.

THe third Collation containeth matter against Bawdes, that they be not suffered in any place of the Roman Empire, that being once warned to forbear their wicked profession, if they offend therein again, they die the death therefore. If any man let any house to a bawd, knowing him to be a bawd, that he shall forfeit * x. li. to the Prince, and his house shall be in danger to be confiscated.

Of Maiors and Governors of Cities, that such be chosen that be honest people, and men of credit, and that no man of the Citie being thereto chosen, refuse the same, and that such as are thereto chosen, shall sweare they will proceede in every matter, according to Law and Conscience.

That there be a certaine number of Clerkes in every Church, and that it be neither diminished, nor increased, and therefore that there be a translation of those that abound in one Church, into an other Church that wanteth.

The precepts which Princes gave to Rulers of Provin-

* Sciat se decem librarum auri sufficere penam, & circa ipsam periclitaturum habitationem. In Auth. De Legionibus. § Sancimus. Coll. 3.

ces, were these in effect: that whereas themselves were freely chosen thereunto, they should in due sort and order goe into their Provinces, that they should keepe their hands pure from bribes, that they should carefully looke unto the Revenues of the Exchequer, and the peace and quiet estate of the Province, repress outrages and rebellions, procure that causes be ended with all indifferencie, and ordinary charges: to foresee, that neither themselves, nor any of their officers, or under ministers, doe injurie to the people, and so those that ought to helpe them, should hurt them: To provide that the people want not necessary sustenance, and keepe the Walls of the Citie in reparation: that they punish offences according to the Law, without respect to any mans privilege, neither admit any excuse in the examining or correcting of the same, save innocencie onely: that they keepe their Officers in order: that they admit to their Counsell such as are good men, & are milde towards such as are good, and sharpe towards such as are evill: that they afford not Protections to every man, neither to any one longer then it is fit and convenient it should be: that where they remove, they vex not the Countrey-men with more carriages then is needfull: that they suffer not Churches, and other like holy places, to be a Sanctuarie to murderers, and other such like wicked men: that they suffer not Lands to be sold without fine made to the Exchequer: that they regard not Letters or rescripts, contrary to Law, and against the weale publick, unlesse they be seconded: that they suffer not the Province to be disquieted under pretence of Religion, heresie, or schisme, but if there be any Canonically or ordinary thing to be done, they advise thereof with the * Bishop: that they doe not confiscate the goods of such as are condemned: that they patronize no man unjustly: that no man set his Armes or Cognifance upon an other mans Lands: neither that any carrie any weapon, unlesse he be a Souldier.

What is an hereditary portion, and how children are to succeed: of such as deny their owne hand-writing, and

* how

* *Auxiliarius
tunc autem tibi
ad hoc etiam
Dei auxiliis
Ecclesiarum de-
fensores De
Mand. Princip.
S Neque autem
homini.*

* how they are to be punished, as well in personall as in reall actions : and that such deniers after their deniall be not admitted to other exceptions : and the taking away the thing in controversie from him, which denied the true owner to be Lord thereof.

* *Condemnationem adversum eum duplicem in utroque casu fieri sancimus. De Trient. & semiss. § Studium vero.*

S E C T. 5.

What is comprehended in the fourth Collation.

THe fourth Collation handleth matters of Marriage, and that marriage is made onely by consent, without either lying together, or instruments of dowrie : Of women that marrie againe within the yeare of mourning, which by Law in sundry sorts was punished, for confusion of their issue : that there be an equall proportion in the Dowrie, and the Joynture : Of Divorce and separation of marriages, and for what causes, by consent, for impotencie, for adulterie : and that Noble women, which after the death of their first husband, being noble personages, marry to inferiour men, shall lose the dignity of their first husband, and follow the condition of their second husband.

Of Appeales, and within what time a man may appeale, and from whom, and to whom the appeale is to be made.

That none which lends money to a husband-man, take his land to morgage, and † how much usury-money a man may take of a husbandman.

Of her that was brought to bed the eleventh moneth, after her husbands decesse, and that such as are borne in the beginning of the same moneth, are to be accounted for legitimate, but such as are borne in the end thereof, are to be holden for bastards.

that was delivered of a childe the 14. moneth after her husbands decesse, neverthelesse the good repute which was generally conceived of this womans continencie, prevailed so much against the letter of the Law, that the reverend Judges awarded the case of child-birth to be extraordinary, the woman to be chaste, and the childe legitimate : *Hæc tamen in exemplum trahi facile non oportet*, as the Glosse there concludeth.

† *Nihil amplius quam si-
quam unam pro
singulo solido
annuam præ-
stare. Ne quis
quod Agricol.
§ Sancimus.*

The Glosse
relateth a mat-
ter of fact con-
trary to this
Law : A wi-
dow in Paris

* *Septim. 18. de
est. Chariam
puram.*

Of instruments and their credit, and that in every instrument there be Protocols left, that is, signes and notes of the time when such a contract was made, and who was notarie and witnesses to the same, and that after it be written faire, and ingrossed in a lidge or faire * *mundum* Booke

S E C T. 6.

What is comprised in the fifth Collation.

THe fifth Collation forbiddeth the alienation or selling away of the immoveable possessions of the Church, unlesse it be done under certaine solemnities, and then onely when the moveable goods are not sufficient to pay the debts of the Church or holy place.

Further, it provideth that the name of the Prince for the time being, be put in all instruments, and the day and yeare when the instrument was made.

That the Oath of the deceased, as concerning the quantitie of his goods, so farre as it toucheth the division of the same among his children, be holden for good, but that it be in no sort prejudiciall to the creditors.

Of women tumblers, and such other of like sort, which with the feats of their body, maintaine themselves, that no oath or suertie be taken of them, that will not leave that kind of life, since such oath is against good manners, and is of no value in Law.

That such gifts as are given by private men to their Prince, need no record, but are good without enrolling of them; and in like sort such things as are given by the Princes to private men.

That no person, thing, or gold of an other man be arrested for an other mans debt, which they now call reprisals, and that he which is hurt by such reprisals, shall recover the foure double of the damages that he hath suffered thereby, and that one man be not beaten or stricken for another.

That he that calls a man into law out of his Territorie, or Province where he dwelleth, shall enter caution, if he ob-
taine

ceine not in the sute against him, hee shall pay him so much as the Judge of the Court shall condemne him in. And that he who hath given his oath in Judgement, shall pay the whole costs of the sute, but after shall be admitted to prosecute the same if he will, so that he put in suerties to performe it.

That such women as are unindowed shall have the fourth part of their husbands substance, after his death, and in like sort the man in the womans, if the man or woman that surviveth be poore.

That Churches or Religious persons may change grounds one with an other : for that one priviledged persons right ceaseth against an other, that is in like sort priviledged.

That such changes of Mannors, Lands, Tenements, and Hereditaments, as are made by Church-men to the Prince, be not fained matters, and so by the Prince come to other mens hands, who have set on the Prince to make this change, and that the change be made to the Princes house onely, and if the Prince, after convey or confer the same upon any private man, it shall be lawfull for the Church to reenter upon the same again, and to repossesse it as in her former right.

That in greater Churches, Clerks may pay something for their first admittance, but in lesser Churches it is not lawfull.

That such as build, found, or endow Churches (which must goe before the rest) doe the same by the authoritie of the Bishop; and that such as are called Patrons, may present their Clerks unto the Bishop, but that they cannot make or ordaine Clerks therein themselves.

That the sacred mysteries or ministeries be not done in private houses, but bee celebrated in publick places, lest thereby things be done contrary to the Catholick and Apostolick faith; unlesse they call to the celebrating of the same, such Clerks, of whose faith & conformitie there is no doubt made, or those who are deputed thereto by the good will of the Bishop. But places to pray in, every man may have in his owne house ; if any thing be done to the contrary,

the house wherein these things are done, shall be confiscated, and themselves shall be punished at the discretion of the Prince,

That neither such as be dead, nor the Corse or Funerall of them be injured by the creditors, but that they be buried in peace.

That womens Joyntures be not sold, or made away, no not even with their owne consent.

In what place, number, forme, maner, and order the Princes Councill is to sit, and come together.

That hee that is convented in judgement, if hee wilfully absent himselfe, may be condemned after issue is joyned.

That no man build a Chappell or Oratorie in his house, without the leave of the Bishop, and before hee consecrate the place by prayer, and set up the Crosse there, and make Procession in the place; and that before he build it, he allot out lands necessarie for the maintenance of the same, and those that shall attend on Gods service in the place: and that Bishops be not non-residents in their Churches.

That all obey the Princes Judges, whether the cause bee Civile or Criminall they judge in; and that the causes be examined before them without respect of persons, and in what sort the Proces is to be framed against such as be present, and how against those that be absent.

SECT. 7.

What is the matter of the sixth Collation.

THe sixth Collation sheweth, by what meanes children illegitimate, may be made legitimate, that is, either by the Princes dispensation, or by the farthers Testament, or by making instruments of marriage betweene the Mother and Father of the children, so that the Mother die not before the perfecting of them, or that shee live riorously with other men, and so make her selfe unworthy to be a wife.

That Noble personages marrie not without instruments of Dowrie, and such other solemnities as are uttall in this behalfe,

best, that is, that they profess the same before the Bishop, or minister of the place, and three or four witnesses at the least, and that a remembrance thereof be left in writing, and kept with the Monuments of the Church; but that it shall not be needfull for meaner persons to observe the former solemnities.

That such as were indebted to the Testator, or they to whom the Testator was indebted, bee not left Tutors or Guardians to their children; that if any such be appointed a Tutor, a Curator be joyned to him to have an oversight of his dealing: that Tutors or Curators are not bound by Law to let out the Minors money, but if they doe, the interest shall be the Minors; and the Tutor shall have every year two moneths to finde out sufficient men, to whom he may let the money out to hyer, for that it is let out at his perill: that if the Minors state be great, so that there will be a yearly profit above his finding, the Tutor shall lay up the residue for a stock against he comes to age, or buy land therewith, if he can finde out a good bargaine, and a sure title: but if the childes portion be small, so that it will not find him, then the Tutor or Curator shall dispose of the Minors state, as hee would dispose of his owne, to which also hee is bound by oath.

How such instruments as are inrolled before Judges, concerning matters of borrowing and lending and such like may have credit: how men may safely bargain either with writing or without writing, if themselves be ignorant men; and of the comparison of Letters, and what credit there is to be given to an instrument, when the writings and witnesses doe varie among themselves.

Of unchaste people, and such as riot against nature, whose punishment is death.

Of such as despitefully, on every light trifle, swear by God, and * blasphemie his holy name, against whom also is provided the sentence of death.

That the Justices of Peace, or other Officers to that purpose appointed, speedily dispatch the businesse of those

* The crime of Blasphemy was so odious to the Emperour, that he thought God would never suffer a blasphemer to go unpunished; & for sins of this nature, saith he, the world is visited with famines, plagues, and pestilences: therefore the Law heere provideth, that a blasphemer shall undergoe ultimum supplicium.

If thou meetest (saith Chrysostome) a man blaspheming, *πάππον αὐτοῦ ὅψιν οὐρανίου αὐτῷ τὸ σῆμα, ἀλλὰ σὺν σὺ τὴν χεῖρα διὰ τῆς πληγῆς*: Strike him a boxe on the eare, give him a dath in the mouth, and sanctifie thy hand with a blow. *Ἀντιόχων. α. five Hom. 1. ad Pop. Antiochenum. pag. 460. edit. Savil.*

which are of their Jurisdiction : that such as come as strangers and forreiners out of other countries, having no just cause of their comming, be sent back againe with their substance, to such places as they came from : but if they be idle vagabonds and rogues, or other like valiant beggers, they either drive them out of the place, or compell them to labour : yet evermore having regard to provide for such as are honest, poore, old, sick, or impotent.

That Clerks be first convented before their Ordinarie, and that the Ordinarie doe speedily end the matter, that they may not be long absent from their benefices : and that they be not drawne before temporall Judges, unlessse the nature of the cause doe so require it, as that it be a meere civile cause, or a criminall cause, belonging wholly to the Temporall court ; wherein, if a Clerke shall be found guilty, he shall first be deprived from his ministerie, and then shall be delivered over into the Secular hands : but if the crime be solely Ecclesiasticall, the Bishop alone shall take knowledge thereof, and punish it according as the Canons doe require.

That where one dieth without issue, leaving behind him brethren of the whole blood, & brethren of the halfe blood ; the brethren of the whole blood have the preheminence in the lands and goods of the deceased, before the brethren of the halfe blood, whether they be of the fathers side, or the mothers side.

That no man make Armour, or sell it, without the Princes leave, unlessse they be knives or other such like small weapons.

S E C T. 8.

What is the matter of the seventh Collation.

THAT prooffe by witnesses was devised to that end, that the truth should not be concealed ; and yet all are not fit to be witnesses, but such alone as are of honest name and fame, and are without all suspicion of love, hatred, or corruption ;

tion; and that their dispositions be put in writing, that after the witnesses be published, and their depositions be knowne, there be no more production of witnesses, unlesse the partie sweare those p^roofes came a new unto his knowledge.

If Parents give profusely to one of their children, the other notwithstanding, shall have their lawfull portions, unlesse they be proved to be unkinde towards their parents.

That women, albeit they be debtors or creditors, may be Tutors or Curators to their children; and that there is not an oath to be exacted of them that they will not marry againe, so that they renounce their priviledge granted unto them *per Senatus consultum Velleian*: and performe all other things, as other Tutors doe.

That Governours of Provinces are not to leave their charges, before they are called from thence by the Prince, otherwise they incurre the danger of Treason.

That womens Dowries have a priviledge before all other kinds of debt; that what Dowrie a woman had in her first marriage, shee shall have the same in her second marriage, neither shall it be lawfull for her father to diminish it, if it returne againe unto his hand.

That a man shall not have the propertie of his wifes dowrie, neither a woman the property of that which is given her before marriage, but the property of either of them shall come unto their children, yea though they marry not againe.

SECT. 9.

What is comprised in the eighth Collation.

Wills or Testaments, made in the behoofe of children, stand good, howsoever imperfect otherwise they are, but they are not available for strangers (but strangers are they which are not children) neither mattereth it whether the Will or Testament be writ by the fathers hand only, or by some other body by his appointment; and as the father divideth the goods among the children, so they are to have their parts.

*De Testa-
ment imperfect.
§ Nos igitur.*

Of Hereticks, and that such are Hereticks, which doe refuse to receive the holy Communion at the Ministers hand, in the Catholick Church : That Hereticks are not to be admitted to roomes and places of honour, and that women-Hereticks may not have such priviledge as other women have in their Dowries.

That is called marriners usurie, that is wont to be lent to Marriners, or Merchant-men, specially such as trade by sea; which kind of lending, the Law calleth passage-money, in which kinde of usury, a man cannot goe beyond the 100. part.

That Churches enjoy a 100. yards prescription.

That such things as are litigious, during the controversie, are not to be sold away. A litigious thing, is that which is in sute betweene the plaintife and defendant.

That while the sute dependeth, there be no Letters or Edict procured from the Prince concerning the cause in question, but that the cause be decided according to the generall Lawes in use.

That in Divorces, the children be brought up with the innocent partie, but at the charges of the nocent ; and that Divorces be not admitted , but upon causes in Law expressed.

That no woman, whose husband is in warfare, or otherwise absent, shall marrie againe, before shee have certaine intelligence of the death of her former husband, either from the Captain under whom he served, or from the Governour of the place where he died ; and if any woman marry again without such certaine intelligence, how long soever otherwise her husband be absent from her, both shee and he who married her, shall be punished as adulterers ; and if her former husband after such marriage, retorne back againe, shee shall retorne againe to her former husband, if hee will receive her, otherwise shee shall live apart from them both.

If any man beat his wife for any other cause, than for which he may be justly severed or divorced from her, hee shall for such injurie be punished.

*De hered. ab
intestat. § si
quis autem.*

If any man conceive a jealousie against his wife, as that she use any other man more familiarly than is meete shee should, let him three severall times admonish him thereof, before three honest and substantiall men; and if after such admonition he be found to commune with her, let him be accused of adultery before such a Judge, who hath authority to correct such offences.

S E C T. 10.

What is the matter of the ninth Collation.

THE ninth and last Collation containeth matter of succession in goods, that as long as there be any Descendent, either Male or Female, so long neither any Ascendent, or any Collateral can succeed; and that if there be no Descendent, then the Ascendent be preferred before the Collateral, unless they be brethren or sisters of the whole blood, who are to succeed together with the Ascendent; but in Ascendents, those are first called which are in the next degree to the deceased, then after those which are in a more remote degree: that in Collaterals all be equally admitted, which are in the same degree, and of the same Parents, whether they be male or female.

That the lands of any Church, Hospitall, or other like Religious place, be not sold, aliened, or changed, unless it be to the Princes house, or to, or with an other like Religious place, and that in equall goodnesse and quantitie, or that it be for the redemption of Prisoners: and that they be not let out to any private man more than for 30. years, or 3. lives, unless either the houses be so ruined, that they cannot be repaired without great charges of the Church, or other religious houses, or that it be overcharged with any debt or duties belonging to the Exchequer, and thereby there cometh small revenue to the Church, or Religious place thereout; in every of which cases it is lawfull to let out the same for ever, reserving a yearly competent rent, and other acknowledgement of other sovereignty therein.

That

That the holy vessels of the Church be not sold away, unlesse it be for the ransoming of Prisoners, or that the Church be in debt; in which case, if they have more holy vessels than are necessary for the service of the Church, they may sell those which are superfluous to any other Church that needeth them, or otherwise dispose of them at their pleasure for the benefit of the Church, or other holy place whose they are.

Where Usurie in proceſſe of time doth double the principall, there Usurie for the time to come doth cease, and those particular payments which afterwards doe follow are reckoned in the principall.

What kinde of men are to be chosen Bishops, such as are found in faith, of honest life and conversation, and are learned, that such as chuse them, sweare before the choyce, they shall neither chuse any for any reward, promise, friendship, or any other sinister cause whatsoever, but for his worthinesse and good parts onely.

That none be ordeined by Symonie, and if there be, that both the giver, taker, and mediator thereof be punished according to the Ecclesiasticall Lawes, and they all made unworthy to hold or enjoy any Ecclesiasticall living hereafter.

That if any at the time of any Bishops election, object any thing against him that is to be elected, the election be staid, till prooffe be made of that which is objected by the adversarie against the partie elected, so that he prove the same within three Moneths; and if any proceeding be to the consecration of the same Bishop in the meantime, it is void.

That the Bishop after he is ordeined, may with out any danger of Law, give or consecrate his goods to the use of the Church, where he is made Bishop, and that he may give such fees as are due to the electors by law or custome.

That Clerks be not compelled to undergoe personall functions, and services of the common-wealth, and that they busie not themselves in secular affaires, and so thereby be drawn from their spirituall function.

That

That Bishops for no matter or cause be drawne before a temporall Judge, without the Kings speciall commandement, and if any Judge presume to call any without such speciall warrant, the same is to lose his office, and to be banished therefore.

That no Bishop absent himselfe from his Dioces without urgent occasion, or that he be sent for by the Prince, and if any doe absent himselfe above one yeare, that he shall lack the profit of his Bishoprick, and be deposed from the same, if he returne not againe within a competent time appointed for the same.

What maner of men are to be made Clerks, such as are learned, and are of good Religion, of honest life and conversation, and are free from suspition of incontinencie: that no Minister be lesse than 35. yeares of age, and that no Deacon or Subdeacon be under 25. that all Clerks and Ministers be ordained freely.

If any build a Church, and indow the same, that he may present a Clerk thereto, so that he be worthy to be admitted thereto: but if he present an unworthy man, then it apperteineth to the Bishop to place a worthy man therein.

If any Clerke be convicted to have sworne falsely, hee is to be deprived of his office, and further to be punished at the discretion of the Bishop.

That Clerks be convented before their owne Bishops, and if the parties litigant stand to the Bishops order, the Civile Judge shall put it in execution: but if they agree not upon the judgement, then the Civile Judge is to examine it, and either to confirme or infirme the Bishops order, and if he confirme it, then the order to stand, and if not, then the party grieved to appeale.

If the cause be criminall, and the Bishop finde the party guiltie, then the Bishop is to degrade him, and after to give him over to the secular power: the like course is to be held, if the cause be first examined before the temporall Judge, and the partie found guiltie, for then hee shall be sent to the Bishop to be deprived, and after againe shall

be delivered to the secular powers to be punished.

That Bishops be convented before their Metropolitans.

*Si vero etiam
Litaniarum con-
cusserit capita-
le periculum
sustinebit. De
Sanctissim. E-
piscop. & Deo.
& Si quis cum
sacra ministr.*

That such as in Service time do abuse, or injure the Bishop, or any Clerke in the Church, being at divine service, be whipt, and sent into banishment: But if they trouble thereby the divine Service it selfe, they are to dye the death for the same.

That Lay men are not to say or celebrate divine Service, without the presence of the Minister, and other Clerkes thereto required.

That such as goe to Law, sweare in the beginning of the suit, that they haue neither promised, or will giue ought to the Judge, and that usuall fees be taken by the Advocates Counsellours, Proctors, or Attournies, and if any man take more than his ordinary fees, he shall be put from his place of practise, and forfeit the foure double of that he hath taken.

That the 4th generall Councils be holden as a Law, and that which is decreed in them.

That the Bishop of Rome hath the first place of sitting in all assemblies, and then the Bishop of Constantinople.

That all Clergy mens possessions be discharged from all ordinary and extraordinary payments, saving from the repairing of Bridges and High wayes, where the said possessions doe lye.

That no man build a Church, or holy place, without the leaue of the Bishop, and before the Bishop there say Service, and set up the signe of the Crosse.

That no man in his owne house suffer Service to be said, but by a Minister allowed by the Bishop, under paine of confiscating of the house, if it be the Lord of the house that presumeth to doe it, or banishment, if it be done by the tenant.

If any bequeath any thing to God, it is to be payed to the Church where the Testator dwelled.

If any devise by his last Will a Chappell, or Hospitall, to be made, the Bishop is to compell the Executors to performe

performe it within five yeares after the decease of the Testator ; and if the Testator name any governour, or poore thereto, they are to be admitted, unlesse the Bishop shall finde them unfit for the roome.

That the Bishop see such Legacies performed, as either are given for the redemption of prisoners, or for other godly uses.

That Masters of Hospitals make an account of their charge, in such sort as Tutors doe.

That such as lust against nature, and so become brutish, receive condigne punishment worthy their wickednesse.

That such as make Eunuches, themselves be made Eunuches, and if they escape alive, their goods to be forfeited to the Exchequer, and themselves be imprisoned all the dayes of their life.

Such as by force steale away women ; themselves, and such as are their abbetters and helpers, are to dye therefore; and that it shall not be lawfull for her that is carried away, to marry to him that doeth carrie her away : and that if her father doe give his consent to such marriage, he is to be banished: but if she marry him without her fathers consent, then is shee not to take benefit by her fathers Will, or any other thing that is her fathers.

These, and sundry matters of great importance, and necessarie for the well governing of a common-wealth, are contained in the Authenticks, which I passe over with drie fonte, not because they are not necessary to be knowne, but because I would not cloy the Reader even with those things which are good.

All these workes are the labour of *Justinian*, as either gathered together by him out of ancient Lawyers bookes, and such Emperours decrees, as went before him, or else were decreed and ordeyned by him selfe, as matter and occasion offered it selfe, and the youngest of them is neere eleven hundred yeares of age, that is, within 500. yeares after Christ, or not much otherwise.

CHAP. IV.

SECT. I.

*That the last Tome of the Civile Law is the Fendes,
and what they are.*

THe last Tome of the Civile Law is the Fendes, that is the bookes of Customes and Services that the subject or vassall doth to his Prince, or Lord, for such lands or fees as he holdeth of him.

This peece of the Law, although it was not much in use in the old Emperours dayes, yet *Justinian* himselfe seemeth to acknowledge them in his Novell constitutions, calling them *spatias*, and those which are more carefull to seeke out the beginning of them, bring them, some from the ancient Clienteles or retinews the ancient Romans before Christs time had, as *Budens* doth; some other from *Alexander Severus* time, who, as *Lampridius* in the life of *Alexander* saith, gave such lands as hee wonne out of the Enemies hands to his Lords Marchers, and his souldiers, that they should be theirs, and their heires for ever, so they would be Souldiers, neither should they come at any time to the hands of any private man, saying, they would more lustily serve, if they fought for their owne land; which opinion commeth next to the ancient border-grounds of the Romans, whereof there is a title in the eleventh Booke of the Code, *De fundis Limitrophis*, that is, of Border-ground: Others referre it over to *Constantines* time the great, who enacted for the benefit of his souldiers, that such Lordships and lands as before time they had their wages out of, should passe over unto their heires, and be appropriated to their familie, or stock, so that they found and mainteined continually a certaine number of souldiers.

From whence soever it descended, this is certaine, that it came very late to be a particular volume of the Law it selfe:

The

The compilers or gatherers together thereof, were *Obertus de Horto*, and *Giraldus Compagist*, two Senatours of Millaine, who partly out of the Civile Law, and partly out of the Customes of Millaine drew the same, but without forme or order.

See for the originall of the Feuds *Cuacius*, but specially *Sir Henry Spelman's* Glossarie.

The word it selfe is a barbarous word, but had his originall, notwithstanding, as *Isidore* saith, from the word *Fœdus*, being a good Latin word, and so is to be interpreted *tanquam Feodum*, that is, as a thing covenanted betweene two: Others deduce it from the word *Fides*, as it were in Latin *Fideum*, and by a more pleasant pronounciation *Fœdum*; whereupon such as are Feudataries to other, are called in Latin *Fideles*, because they owe faith and alleageance to such whose Feudataries they are, who in the *Lombard* tongue are called *Vassals*. Besides, Fealtie, which some call *Hominiūm*, by the Feudists is tearmed Homage: for the nature of a Feude is this, that it draweth with it faith and homage: so that such as are Feudataries, or fee-men, professe themselves to owe faith to such, to whom they are in fee, and that they are his men; insomuch, as when a fee-man dieth, his heire doth make faith, and doth his homage to the Lord, as is well seene both in the Lords Spirituall and Temporall of this land; who both in their creation, and also in their succession one after another swear an oath, and doe their homage to their Sovereigne, and doe pay other dueties which are Symbols and signes of their subjection to their Sovereigne: And for others that are under the degree of Barons, and yet are fee-men unto the King, and so doe not manuell obedience unto his Majestie, they pay yearly something in respect of their homage, according to the quantitie or qualitie of the fee or tenure they hold of the Prince.

A Feude in English may be called a Tenure, which caused *Littleton*, when he treated of Feudes, to far forth as they are here in use in England (such as are all those which are called in Latin *Feuda militaria*, & *Feuda scutiferorum*, called

by *Justinian Douçopages*, which are by the Lawes of the land, tearmed by the names of Knights-services, and Escuage) to call them by the names of Tenures.

A Feude is a grant of lands, honours, or fees, made either to a man at the will of the Lord, or Sovereigne, or for the Feudataries owne life, or to him, or his heires for ever, under condition, that he and his heires in case where the Feude is perpetuall, doe acknowledge the giver and his heires to be their Lord and Sovereigne, and shall beare faith and alleageance unto him and his, for the said Tenure, and shall doe such service to him and his for the same, as is betweene them covenanted, or is proper to the nature of the Feude.

S E C T. 2.

That Feuds are either Temporall or Perpetuall, and how.

OF Feuds, some are Temporall, some other are Perpetuall.

Temporall Feuds are those that are given, either for terme of a mans life, or for yeares, or at the will of the Lord, for some service done, or to be done; such as are Annuities given to Lawyers for counsell, Pensions given to Physitians for their advise, Stipends to any Teacher of Arts and Sciences, Fees for keeping of Towres and Castles, called by Feudists *Castalia*, and is by *Littleton* called Castle-ward, although by him it is taken for a state of inheritance.

Perpetuall Feuds, are rights which a man hath by grant from the Sovereigne, or chiefe Lord of the soyle or territory, to have, hold, use, occupie, and enjoy honours, mannors, lands, tenements, or hereditaments, to him and his heires for ever, upon condition that the said vassall or partie, his heires and successours, doe homage and fealty to his Lord, his heires and successours, for such honours, lands, or hereditaments, and doe him either service in warre, according as it is covenanted betweene the Lord
and

and his vassall, or such other service as the nature of his tenure doth require, or if hee faile therein, he shall either finde some other in his roome to doe the same, or else pay a certaine summe of money in lieu thereof.

Although this Tenure by the first creation thereof be perpetuall, yet that the soveraignty thereof should not still remaine unprofitable to the first Lord, the whole benefit thereof going continually to the vassall or tenant; it is provided, that the Sovereigne or chiefe Lord the first yeare, the heire or successour of the vassall comes unto his land, shall have the whole revenue of his livelihood for that yeare, or a certain summe of money in token of the returne thereof unto the Lord, and the redemption thereof made againe by the tenant, which by the Law of the Novels is called *εισδεκτικον*, and is well nigh the same that wee call livery, which every heire that holdeth in Knights service, sueth out before he take possession of his land, as heire to his Ancestours.

This Tenure is gotten either by Investiture, or by Succession.

Investiture is the same that we call Creation, and is the Premier grant of a Feude or Tenure to any, with all rights and solemnities thereto belonging, wherein the homager, or feodatarie for the most part upon his knees promisseth faith and allegiance under a solemne oath unto his Lord, and his successours.

Investiture
what it is.

Succession is, whereby the eldest sonne succeedeth the father in his inheritance, and if hee faile and have no issue, then the next brother, and so in order successively; and if there be no sonne, then the next heire male, and if there be no heire male, then the land escheats unto the Lord. For the *Lombards*, from whom the Feuds first came, or at the least were chiefly derived from them, directing all their policie as the *Lacedaemons* did, to matters of warre, had no feminine Feuds among them, but after by processe of time, there were created aswell Feminine Feudes as Masculine Feuds, in so much, as where there was no issue male

What is Suc-
cession in the
Feuds.

male to put them from it, women did succeed in the inheritance.

S E C T. 3.

Of Feudes Regal and not Regal, Leige and not Leige, and how Feuds may be lost.

OF Feuds, some are Regall, some not Regall: Regall are those which are given by the Prince only, and cannot be given by any inferiour.

Of these, some are Ecclesiasticall, as Archbishopricks, Bishopricks and such like: Others are Civill or Temporall, as Dukedomes, Earledomes, Vicounts, and Lords, who by that, are distinguished from the rest of the people, that they haue the conducting of the Princes Armie at home, and abroad, if they be thereto appointed, and haue right of Peeres in making of Lawes, in matters of triall, and such other like businesses.

Not Regall are those which hold not immediatly of the Prince, but are holden of such Ecclesiasticall or Civill States which haue had their Honours immediatly from the Prince.

Besides of Feuds, some are Leige, others not Leige. Leige Feuds, are they in the which the vassall or feodatorie promiseth absolute fealtie or faith to his Lord, against all men without exception of the King himselfe, or any other more auncient Lord to whom besides he oweth allegiance or service. Of this sort there is none in this Realme of England, but such as are made to the King himselfe, as appeareth by *Littleton* in the title of Homage, wherein is specially excepted the faith which the Homager oweth to his Lord the King.

Feuds not Leige, are such wherein Homage is done, with speciall reservation of his faith and allegiance to the Prince and Sovereigne.

Of such as are Vassals or Leige men, some are called *Valvasores majores*; others *Valvasores minores*. *Valvasores majores*

*Salve le Foy
que je doy à no-
stre Signour le
Roy. Littleton.
tit. Homage.*

Vassals.

maiores are such as hold great places of the state under the Emperour or King, (as are the degrees of Honour before-named, and are called *Peeres of the Land*) who onely gives Nobilitie. *Valuatores minores*, are those which are no *Peeres of the Land*, and yet have a preheminance above the people, and are, as it were, in a middle Region betweene the people and the Nobilitie, such as are Knights, Squires, and Gentlemen.

The Feuds are lost by sundry wayes, by default of issue of him to whom it was first given, which they call *Apertura feudi*; by surrender thereof, which by them is termed *Refusio feudi*; by forfeiture, and that was in two sorts, either by not doing the service that his tenure did require, or by committing some villainous act against his Lord, as in conspiring his Sovereignes death, defiling his bed, or deflowring his daughter, or some other like act treacherous to his Lord, & unworthy of himselfe.

CHAP. V.

SECT. I.

What the Canon Law is in generall: What the Decrees are, and of how many parts.

AND so much of the Civile Law, & the Bookes thereunto pertaining. Now it followeth, that I doe in like order speak of the Canon Law, which is more hardly thought upon among the people, for that the subject thereof, in many points, hath many grosse and superstitious matters used in the time of Papiſtrie, as of the Masse, and such other like *superstitions*; and yet there are in it beside, many things of great wildome, and even those matters of superstition themselves, being in a generalitie, well applied to the true service of God, may have a good use and understanding.

The Canon Law, hath his name of the Greeke word *Canon*, which in English is a Rule, because it leads a man straight, neither draws him on the one side or the other, but rather correcteth that which is out of Levell and Line.

The Canon Law consisteth partly of certaine Rules, taken out of the holy Scripture, partly of the writings of the ancient

What is the Canon Law.

What is the antiquity of Decrees, and who were the Authors that compiled them.

* *Trithem*, in his second Booke *De viris illust.* saith, that *Gratian* wrote this Worke at *Bononia*, in the Monasterie of *S. Felix Anno* 1127. Others say, it was done in the yeare 1151. *Bellarmino* to reconcile the difference, saith, that *Gratian* might begin the work according to the first account, and finish it according to the second.

Fathers of the Church, partly of the ordinances of generall & provinciall Councils; partly of the Decrees of Popes of former ages. Of the Canon Law, there are two principall parts, the Decrees & the Decretals. The Decrees are Ecclesiasticall constitutions, made by the Pope and Cardinals, at no mans suit; & are either Rules taken out of the Scripture, or Sentences out of the ancient Fathers, or Decrees of Councils. The Decrees were first gathered together by *Ivo*, B. of *Carnar*, who lived in the time of *Urban* the 2. about the yeare of our Lord God 1114, but afterward polished & perfected by *Gratian*, a Monk of the Order of *S. Benet*, in the yeare * 1149. and allowed by *Eugenius* the Pope, whose Confessor hee was, to bee read in Schooles, and to be alledged for Law.

Of all the severall Volumes of the Canon Law, the Decrees are the ancientest, as having their beginning from the time of *Constantine* the great, the first Christian Emperour of *Rome*, who first gave leave to the Christians freely to assemble themselves together, and to make wholsome lawes for the well government of the Church. The Decrees are divided into three parts, wherof the first teacheth of the origen and beginning of the Canon Law, and describeth and setteth out the rights, dignities, degrees of Ecclesiasticall persons, and the manner of their elections, ordinations, and offices, and standeth of one hundred and one distinctions.

The second part setteth out the causes, questions, and answers of this Law, which are in number 36. and are full of great varietie, wisdom, and delight.

The third and last part, containeth matter of consecration of all sacred things, as of Churches, bread and wine in the Sacrament, what dayes and Feasts the Primitive Church used for the receiving thereof, of the ministring of the Sacraments in Baptisme, and the use of imposition of hands, all which is set out under five distinctions.

SECT. 2.

What the Decretals are, and how many parts they comprehend.

THE Decretals are Canonically Epistles, written either by the Pope alone, or by the Pope and Cardinals, at the instance or suit

mit of some one or more for the ordering and determining of some matter in controversie, and have the authoritie of a law in themselves.

Of the Decretals there be three Volumes, according to the number of the Authors which did devise and publish them.

The first Volume of the Decretals was gathered together by *Raymundus Barcinus*, Chaplain to *Gregory* the ninth, at his the said *Gregories* commandement, about the yeare 1231. and published by him to be read in Schooles, and used for Law in all Ecclesiasticall Courts. The second is the worke of *Boniface* the eighth, methoded by him about the yeare 1298 by which, as hee added somthing to the ordinance of his Predecessours, so hee tooke away many things that were superfluous and contrarie to themselves, and retained the rest. The third Volume of the Decretals, are called the Clementines, because they were made by Pope *Clement* the fifth of that name, & published by him in the Councell of *Vienna* about the yeare of grace 1308.

To these may be added the Extravagants of *John* the xxij. & some other Bishops of *Rome*, whose authors are not known, and are as Novell constitutions unto the rest.

SECT. 3.

What is contained in the first Booke of the Decretals.

Every of the former Volumes of the Decretals are divided into five Bookes; and containe, in a manner, one and the same titles, wheréof the first in every of them, is of the blessed Trinitie, and of the Catholick faith, wherein is set downe by every of them a particular believe, divers in words, but all one in substance, with the ancient Symbols, or believe of the old Orthodoxe, or Catholick Church.

Secondly, there commeth in place the treatie of Rescripts, Constitutions & Customes, & the authority of them, & when they are to be taken for Law: after followeth the means whereby the greater Governours of the Church, as namely, Archbishops, Bishops, & such like, come unto their roome, which was in two sorts, according as the parties place or degree was where he was called unto the roome, as if he were under the degree of a Bishop, & was called to be a Bishop, or being a Bishop, was

Of wandering Clerkes, and how that they are not to be admitted to minister in an other Diocese, than where they are ordered, without the Dimissorie Letters of the Bishop, under whom they were ordered. Of Archdeacons, Archpriests, Sacrists, Vicars, what they are, and wherein their particular offices doe consist. Of the office of Judges in generall, and their power, whether they be Delegats, Legats *à latere*, or Judges ordinarie. Of difference in Jurisdiction betweene Ministers & Ministers, and what obedience the inferiour Ministers are to yeeld unto their superiours. Of Truce and Peace which Ecclesiasticall Judges are to procure; that truces be kept from Saturday in the Evening, untill Munday in the Morning, and that there be no fighting from the first day of the Advent, untill the eighth day after Twelwe tide, and that warre likewise doe cease from the beginning of Lent, untill the eighth day after Easter, under paine of Excommunication, against him that presumeth to doe the contrarie; and that in time of warre, neither Priests, Clerkes, Merchant-men, country men, either going to the field or coming from the field, or being in the field, or the cattell with which they plough, or the seed with which they sow, be hurt or violated. Judges, before men enter into the dangerous events of Law, are to perswade the parties litigant by private covenants and agreements to compound the controversie betweene them, wherein if they prevaile not, then the parties are to provide themselves of Advocates, Proctors, or Sindects according as they are private men, or bodie politick to furnish their cause, and direct them in proceeding.

If any Church hath beene hurt in any contract of bargain, or sale, or in demising of any Lease, or by the Proctors negligence, it is to be restored againe into her former state, to alledge and plead that for it self, which is agreeable to Law & conscience. The like grace is to be granted to all other Litigants whatsoever, who have by feare or violence, or any other like unjust cause, beene hindered from the prosecution of their right.

If any, seeing a suit like to be commenced against him, doe either appeale before he be served with Proces, or alienate away the thing wherupon the suit was like to grow, he is to be compell'd

compell'd to hold plea of the same cause, before the Judge from whom he did appeale, and to answer his adversarie, as though still he were owner of the thing hee did in policie sell or alienate away.

Many times, things which otherwise can have no speedy end by Law, are compounded by Arbitrement. Arbitrators ought to be odde in number, that if they disagree, that which is concluded by the greater part may prevaile. An arbitrement is a power given by the parties litigant to some, to heare and determine some matter in sute betweene them, and to pronounce upon the same, to which they are to bind themselves under a penaltie to stand.

Arbitrement

SECT. 4.

What is contained in the second Booke of the Decretals.

THe first Booke having set out the first object of the Law, which standeth in the persons who make up the Judgement, as in the person of the Judge himselfe, the Advocates, Proctors and Clients, there followeth in the second Booke, the second object of the same, which is the Judgements themselves, which are to be commenced by a Citation, and that in a competent Court fit for the same, by a Libell offered up in the Court by the plaintife to the Judge, which is to containe the summe of that which is required in Judgement; where, if the defendant doe againe reconvent the plaintife, he is to answer, albeit the defendant be not of that Jurisdiction: the Libell being admitted, the defendant is to joyne issue, and yet before either of them enter any further into the cause, that there may be faire and sincere dealing in the same; and that all suspicion of malicious dealing therein may be taken away, each of them are to take an oath, the Plaintife, that hee doth not of any malice prosecute the sute against the Defendant, or the Defendant of any malice maintaine the sute against the Plaintife, but that they verily beleeve their cause is good, and that they hope they shall be able to prove, the one his libell, the other his exceptions, if he shall put in any into the Court. The cause being begun, delayes are often granted, if either there come any

any holiday betweene, or any other like just cause be offered, as for producing of witnesses and such like: if there be no just cause of delay, then the Judge is to goe on in the due course of Law, (provided alwayes that more be not demanded by the plaintife than is due) and that the cause possessory be handled before the petitorie, and that hee that is spoyled, be first and before all things restored to that thing or place whereof he was spoyled, or from which hee was put; yea, though he have nothing else to alledge for himselfe, besides the bare spoliatio*n* it selfe. If the one side or other willfully or deceitfully decline Judgement, the Judge is to put the other in possession of that which is in demand, or at the least, to sequester the fruits and possessions of that which is in controversie; but if both parties appeare and joine issue affirmatively, then is it but a question of Law, and not of fact, neither doth there remaine ought else to be done by the Judge, but that he give sentence against him that hath confessed it, and put his sentence in execution. But if issue be joyned negatively, then is the plaintife to prove his Libell, so farre as it consists in fact, by witnesses which are to be compelled by Law if they will not come, or appeare voluntarily, by publick and private instruments, by presumptions, by conjectures, by oath; which being done, the Defendant in like sort is to be admitted to prove his exceptions, and cleere his prescription if he be able to alledge any, in which he is Plaintife, neither is hee bound thereto, before the Plaintife have perfected and proved his owne right.

After proofes are brought on either side, and the same thoroughly disputed on by the Advocates, the Judge is to give sentence, which he is to frame according to the Libell & proofes formerly deduced in the cause. The sentence being given, Execution is to be awarded, unlesse there be an appeale made from it within ten dayes by the Law (but fifteene dayes by the Statute of this Eand) from the time the party, against whom sentence was given, had knowledge thereof, or unlesse it be appealed incontinently at the acts, and

and in writing before a publike Notary, or at the least the party against whom the sentence proceeded, with due time, take their journey toward the higher Judge to prosecute the same, by whom the former sentence is either confirmed or infirmed, in the second instance.

S E C T. 5.

What is the subject of the third booke of the Decretals.

THe third booke containeth such Civile matters and causes as are lyable to the Ecclesiasticall Courts; as the honest life or conversation of Clerkes, and their comely comportment in all their demeanour, with what women they are to cohabit, and dwell with, whereby they may be free from all suspicion of ill life, and with whom not, which of them may bee married by the law of the Canons; and which not, in what cases they may be allowed to be non-resident, and in what nor, and how such as are non residents may be called home unto their cure, and if they returne not upon proceffe sent out against them, how they are to be punished, namely by deprivation or sequestration of the fruits and commodities of their benefice.

Prebends and dignities are preferments for Clerkes, but not for such as are idle or absent from the same without just cause: but if any Clerke or Minister be sicke, and his disease be curable, he is to receive the benefit of his prebend or dignity in his absence, as though he were present; but if it be contagious, or incurable, then he is to be put from the exercise of his office, and a helper or coadjutor to be joyned unto him, and they both to be maintained of his stipend.

Prebends or dignities are to be got by institution, which are to be given by the Bishop, or his Chancellour, or such other as have Episcopall jurisdiction, without which, neither any benefice is lawfully gotten, nor can lawfully be retained. Benefices not voyde, ought neither to be granted, heither to be promised; but such as are voyde ought to be granted within sixe moneths after knowledge of the voy-

dance thereof, otherwile the grant of them devolveth, and cometh unto the superiour: hee that causeth himselfe to be instituted into a benefice, the Incumbent thereof being alive, himselfe is to be deposed from his orders.

While any Benefice, or Bishoprick is void, nothing is to be changed or innovated in it; and such gifts, sales, or changes of Ecclesiasticall things, as are made by the Bishop, or any other like Prelate, without the consent of the Chapter, are void in Law: and such Benefices as doe become void, are to be bestowed without any impairing or diminution of the same.

In what case the goods and possessions of the Church may be alienated, and in what not; and that such things as are alienated, be alienated by the greater part of the Chapter, otherwile the alienation is void: What goods of the Church may be lent, what sold, what bought, what changed, what demised, or let to lease, what mortgaged, or let to pawnne. After these follow Tractates of last Wills and Testaments, of succession by way of Intestate, of Burials, of Tythes, first Fruits and Offerings: Of Monkes, and their state in sundry sorts; of the right of Patronage; of Synodals and Procurations; of consecration of Churches; of Celebration of Divine Service, and the Eucharist; of Baptisme, and the effect thereof; of a Priest not baptized; of Fasting, Purification of women, and other like ceremonies pertaining to Ecclesiasticall discipline: Of building and repairing Churches, and of their Church-yards, and the immunitie that belongs to them both, and of sundry other things in like sort pertaining to the Church. That Clerks and other Ecclesiasticall men trouble not themselves about Civile matters, contrarie to their office and profession.

SECT. 6.

What is contained in the fourth Booke of the Decretals.

THE fourth Booke disposeth of matters of Espousals and Marritonic, and sheweth what words make Espousals, what

what Matrimonic, of the Betrothing of such as are under age, of clandestine Espousals and Contracts, and of what account they are to be had of in the Church, and how they may be made good : Of her that hath betrothed her selfe to two men, whose wife shee shall be ; what conditions may be put in Espousals, and what not ; what Clerks or Vicaries may marrie, and what not : Of him that hath married her, with whom before he hath committed adulterie, and whether the same second Matrimonic be good, whereupon the resolution of the Law is, that if the woman knew not that he had an other wife, hee cannot leave her, his first wife being dead, under pretence he had an other wife alive when he married her ; but if shee knew of it, and did joyne with him in practise for making away his wife, he cannot marry her, no though he were seperated from the other, as concerning bed and board : Whether leprous men, and other which are infected with like contagious diseases may marrie, and whether being married, the marriage may not be dissolved upon this point : Of kindred Spirituall or Legall, and in what sort they hinder marriage ; of him that hath knowne his owne wifes sister, or his owne cousin german, and whether this offence doe breake the Matrimonic that is contracted, or doe hinder the Matrimonic that is to be contracted : Within what degrees of consanguinitie or affinitie a man may marrie : Of such as are cold of Nature, or enchanted by Sorcery, whether they may marrie ; the like respect is of women, who are unfit for men : Of such as marrie against the Interdict or prohibition of the Church, and what penaltie they incurre : What children be hold legitimate : who they be that may be accusers or witnesses in cases of dissolution of Marriages betweene man and wife : Of Divorces betweene man and wife, which are caused by the diversitie of mindes that are then betweene them, for that one seeketh to goe apart from the other ; and in what cases divorces are allowed, and how many kinds there be of them : of gifts betweene man and wife, what securitie they have in Law, and that the Dowrie after the divorce

be restored to the woman, so that it be not in case of Adultery, and other such like filthinesse: Of second Marriages, in what cases they are to be permitted, in what not.

S E C T. 7.

What is the subject of the fifth Booke of the Decretals.

THE fifth Booke treateth of such Criminall matters as are handled in Ecclesiasticall Courts, wherein the proceeding is either by accusation, whereto the Accuser doth subscribe his name, because it tendeth to punishment: or else by denunciation, whereto the Informer doth not subscribe his name, because it tendeth only to the amendment of the party, or by Inquisition, which for the most part is not used, but upon some precedent, albeit sometimes it be without fame: if once the same be proved, then may enquire be had of the truth of the fact, but yet without malice or slander. The Criminall matters which are prosecuted in the Ecclesiasticall Courts, and censured by Canonick punishments, are Symonie, and selling of Ecclesiasticall graces and benefices; whereupon Prelates are forbid to let out their Jurisdictions under an annuall rent, and Masters and Preachers to teach for money. The punishment of Jewes and Saracens, and their servants, that is, If a Jew have a servant that desireth to be a Christian, the Jew shall be compell'd to sell him to the Christian for xij. pence: That it shall not be lawfull for them to take any Christian to be their servant: That they may repaire their old Synagogues, but not build new: That it shall not be lawfull for them upon good Friday, to open either their doores, or windowes: That their wives neither have Christian Nurces, nor themselves be nurces to Christian women: That they weare divers apparel from the Christians, whereby they may be knowne, and other ignominies of like sort: Who be Hereticks, and what be their punishments: who be Schismaticks, and what be their punishments. Of Apostataes, Anabaptists, and their punishments: Of those that kill their owne children, and their punishments: Of such as lay out young children, and other

other feeble persons to other mens pirie, which themselves have not, and how they are to be punished: Of voluntarie or casuall murders: Of Tilts, Barriers, and Tournament: Of Clerks that fight in combate: Of Archers that fight against Christians: Of whoredome, and adulterie, and how they are to be punished: Of such as ravish women, and their punishment: Of Theeves and Robbers: Of usurie and the paine thereof: Of deceit and falshood: Of Sorcerie: Of collusion and cosenage, and the revealing of the same: Of childrens offences, and that they are not to be punished with the like severitie as mens offences are: Of Clerks hunters, or hawkers, who if they often times use and sport themselves therein, if they be Bishops, they are to be suspended from the Communion three moneths; if Ministers or Priests two, but if he be a Deacon, he is to be suspended from his office: If a Clerk often times strike other men, and being admonished to forbear such kind of violence, doe nevertheless continue in his folly, he is to be deposed: If a Bishop cause any man rigorously to be whipt, he is to be suspended from laying service two moneths: Such as speak ill of Princes, and other like great persons spirituall or temporall, are to be punished, so that others by their example may take heed to speake ill, specially such as blaspheme the Majestie of the Almighty God: If Clerks excommunicated, deposed, or interdicted, or that came to the highest order without passing thorough the interiour orders, or that came to the same order covenantously, and deceitfully, or being not ordered at all, or at the least not ordered lawfully, dare take upon the either to minister the holy Sacraments, or to say divine Service, they are to be deposed from their office, and from their benefice, and never after to be ordered: Prelates are not to grieve their subjects, either with rash suspension, or excommunication of their persons, or interdicting of their Churches, but they are to execute all those censures of the Church in judiciall order: they are not easily to suffer any man to hold two Benefices, where one may suffice, or to reteine any thing to his owne use, in a

* Other kinds of this vulgar Purgation were observed by the Ancients, as the triall by Water, by the Crosse, and by the Body of our Lord, &c. and these were of ordinary use amongst our owne Ancestours, especially in the darker times. The Saxons (besides the triall by Combate, which they cal-

led *Campe-fight*) commonly used their fire and water Ordeals. Their triall by water was performed, either in hot or cold. In cold water, the parties suspected were judged innocent, if their bodies were not borne up by the water, contrary to the course of Nature. In hot, they were to put their bare armes up to the elbowes, which if they brought out without hurt, they were conceived to be cleere of the crime. They that were tryed by the Fire-ordeall, were either to passe bare-footed over a certaine number of hot glowing plough-shares, or otherwise to carrie burning irons in their hands, a certaine number of paces, and according as they sped, they were judged nocent or innocent. This horrible experiment of Fire-Ordeall in the first kinde, was tryed upon *Queene Emma*, the Mother of *Edward the Confessor*, with a successe worthy of her chastite. An example of the second kinde, and the like event, is recorded by *Eadmerus*, who relateth, that in the reigne of *William the second*, A company of fellows being suspected to have destroyed the Kings Deere, were enjoined for their triall, to carrie burning irons, which accordingly they did without hurt; the issue thereof being reported to the King, was entertained with such a remarkable indignation, that he furiously replied, *Quid est hoc? Deus est iustus Iudex? pereat qui deinceps hoc crediderit*. How solemnly and superstitiously these Ordeals were performed; see *Lambard* out of his ancient Authour, in the word *Ordalium*. Reade also the *Saxon Lawes* of King *Althelstane*, chap. 22. where it is said, that the party suspected, three dayes before his tryall, must goe to the Priest, and heare Masse, and feed for that time upon bread, and salt, and water, and wurts, &c. See the rest in the Law. These kinds of Purgations remained in use amongst our Ancestours, till the time of *Hen. the 3.* in whose reigne they began to be abolished, rather by desuetude and in reverence to this Canon Law, than by any Statute of the Realme: as learned *Mr Selden* hath observed in the Notes upon his forementioned *Eadmerus* p. 204. where also the Reader may see, how farre forth they were forbidden. Only the tryall by Combate, though it be abrogated by the Canon here, is notwithstanding permitted by the Law of this Land, but of very rare and confidate practice.

formed

formed by combate, and passing by burning fire, which is worthily rejected, for that thereby the innocent many times was condemned, and God thereby did seeme to be tempted: Of injuries and wrongs done: Of Ecclesiasticall punishments due to offences, among which one is, That so often as one offendeth, so often hee is to be punished: And that Prelates doe not take reward, to winke at men in their sinnes, or turne corrections into pecuniary paines, for gaine of filthy lucre: Of Penances and Pardons, or remissions: Of Excommunication, which is the greatest punishment in the Ecclesiasticall jurisdiction, and who, and in what cases men are to be stricken thereby.

PART. II.

CHAP. I.

SECT. I.

What uses the Civile and Canon Law have in this our Realme; and that the Civile Law respecteth matters of ordinarie and extraordinary Cognition.



F all those goodly and excellent Titles of the Civile and Canon Law, so full of wisdom, so full of variety, so well serving for every moment, and state of the common-wealth, in peace or in warre, as nothing can be more, the Professours thereof have very little use here within this Realme.

For first, for the Civile Law, (beside the two Universities of this land, that of *Oxford*, and the other of *Cambridge*, to whom the Kings of this Realme have granted a larger libertie, in the practise of these Lawes, than to any other place of the Kingdome; for that their purpose was, to have young men trayned up there, in a more ripe knowledge of these professions, that when they came abroad, they might be more ready in all matters of negotiation and commerce, that the Prince

Prince or State should have need of the to deale in with fore-
rein Nations; when they were thereto called; to which the
Lawes of this Land serve nothing at all, by reason of the dif-
ference that is betweene their Law, (which is either wholly
the Civile Law, or for the most part grounded on it) and
the Law of our Nation; a very few Titles are left to the
practisers thereof to deale in; and most of them seldome and
rare in use, as shall be hereafter shewed, so that I may well
divide all the profession of the Civile Law here with us,
into matters Ordinarie and Extraordinarie.

SECT. 1.

*That the matters of ordinary Cognisance are Marine, of
which some are Civill, others Criminall, and what the
Civill Marine matters are; and what manner of proceed-
ings they have.*

THE matters of ordinary cognisance of the Civill Law
here in this Land, are Marine matters, of which some
are Civill, some are Criminall.

Civill matters are those which concerne either the free
use of the Sea it selfe, or the rights that men have to trade
and traffique thereupon, or the bargaines, sales, or contracts,
or as it were contracts that are made or done beyond or
upon the maine Sea, or any creeke thereof, or within as
much space from the Sea, as the greatest winter wave run-
neth out, for any matter belonging to any negotiation or
merchandize, or any other thing to the Ship or trade ap-
pertaining.

*ff ad legem Rho-
dan. de Factu.
rot. tit.*

And first for the use of the Sea it selfe, the Law holds it to be
common, and that every one hath right to trade & traffique
upon the same, so that it be without the prejudice of that
Prince or Land, to whom the Sea is adjoyning. The like
may be said for the shore it selfe, so that it be either for the
refreshing of themselves with water, or victuall, or for the
repaying of their Shippes, or buying any thing necessary
thereunto, or it bee either for uttering of any commodity
they

they have, or buying any thing againe of the people, upon whose land they touch: in which case it were barbarous to repell any, & to mingle in peaceable manner: albeit it may happen upon some jealousie of the State, either for that it hath some great forraign Enemy, whose continuall invasion they feare, or that the Sea-coasts are much infested with Pyrates, that in this case resistance may be made: but when it is made manifest by flag of Truce, or otherwise, they are no other but well meaning men, they are to be entertained with all kinde of

For Contracts in Marine causes, some are contracts in deed, some are as it were contracts: Contracts in deed are all bargaines and sales whatsoever, made betweene Merchant and Merchant for any commoditie, fraught or traffique in the ship, or any sale or bargain made of the ship, or any thing thereto belonging, as Masts, cordage, anchorage, victuals, or any other thing of like nature, necessarie for the employment of the ship.

Those things which are as it were contracts, are those perpetuall rights, which are betweene the Purser or Master of the Ship, and the Passengers, or betweene one passenger and another.

The perpetuall right which is betweene the Purser or Master of the Ship, and the Passengers is, that the Purser or Master be answerable for all such wares or goods as are brought into the ship, whether it be delivered to himselfe, or any of his Mariners: for he ought not only to be just and honest himselfe, but also use the ministration of honest people about him, and therefore the Master of the ship is no less bound for their persons than his owne. The Passengers againe are honestly and readily to pay the Master of the ship, their fraught, and all such other charges of dyer, and other provisions as they have put him to, wherein if there be any default of any sort, the Law affoordes an action called *Exercitoria*, whereby the one on the other may be recovered.

The Master of the ship is he, who hath the charge of the whole

Amiq. lib. 1.
- 1022 ch. 3.
m. 12.

L. 1. ff. de exercitoria action.

whole anchorage and government of the ship, and his office is either to let the ship to hire, or to buy and sell Merchandise, or to ply fares, or to provide table and furniture for the ship.

*D. ead l. prima
§ 16. de exercit. action.*

The Purser, whom the Law calleth *Exercitor Navis*, is he to whom all the profit or revenue of the ship doth come, whether it be in his own right, or in an others.

The perpetuall right that is betwene passengers and passengers, and saylers and passengers is, that in case of ejections, and casting out of goods, and other merchandise into the Sea in time of tempests, or other dangers, by rocks or quick sands, for the lightning of the ship, because it is for the common good of all that are in the ship, and the preservation of the rest of the freight of the ship, it be made up with the common contribution of all: for good reason it is, that they whose goods are saved hereby, should againe with their goods redeeme the others losse, according to such proportion of goods, as they have in the ship, and the Law of the Sea alloweth.

But in cases of Ejections, the Law of the Sea is this, (which was taken from the people of *Rhodes*, who in old time were great seafaring men, and discoverers of sundry countries, whose Rules even to this day are holden for good among all Maritimers, for the great equitie and indifferencie that is in them) that as well the Master or Purser of the ship himselfe shall contribute for the preservation of his ship, as also the passengers for such wares as they have in the ship, of what sort soever it be, albeit happily it be but of small weight, as Pearles, precious stones, and such like, and if perchance there be some passengers in the ship, who have no wares nor merchandise in it, yet because themselves are burthen to the ship, it standeth also he made of his or their apparell, rings, and Jewels, according to which he or they are to contribute towards the losse of such things as are cast out into the sea: neither is there any thing in the whole ship excepted, save only those things which are put therein to be spent, for the common good of all, as victuals, fuel,

and

and such like; for those things are not brought in for any one private man's use, but for the benefit and service of all; and so much the rather, for that if victuals faile, or other like necessities want, every one must contribute thereto; or impart of that which he hath for his owne private provision; but of mens owne bodies, unlesse they be servants, there is no rate to be set, because a mans body cannot be esteemed.

In pricing, estimate is to be made as well of those things which are lost, as those things which are saved, and the price is to be set downe, not for how much they were bought, but for how much they might be sold, and that for the present. Lest the contributors should be overmuch charged. Neither is it to the purpose that the goods which were lost, might have beene sold for more, for that herein regard is not to be had of the gaine, but of the losse. And if any thing that was throwne out were knowne to be decayed or made worse by washing with salt water, it is not to be esteemed as a new fresh thing, but the price thereof is to be valued accordingly.

Now the contribution is to be made in this manner, first the losse is to be set downe, then the rate of those things which are saved, out of which must be drawne an equal portion, proportionable to the quantity of every mans goods he hath in the ship, to make up the losse, deducting out of the losers goods for himselfe, so much as is answerable to his proportion, so that he shall neither be made a cleere saver, nor a cleere loser, but in a certaine quantitie measurable to his part.

But this contribution is in that case to be made, if the ship be saved; for otherwise if a wrack happen, either before the ejectment, or in the ejectment, then whatsoever any of the vessels or passengers catch, is his owne; neither is there any regard to be had of the losse of the ship, or of the goods, unlesse perhaps afterwards they be drawne out of the sea.

But here we are to note, that neither the things that are thus ejected, cease to be the first owners, neither become his

that takes them up; for because the first owner doth not count them for goods cast away; but still hee beares them in mind to them; that if he may recover them, he will hold them as his owne goods; and in consideration of so much as afterward hee shall recover, the contribution in the rest shall cease.

Neithr is the Master of the ship himselfe by violence of the tempest, shall lose a Mast or a Saile, shall hee be more allowed for loss, than a Carpenter to whom a house is let out to be built, shall be allowed for his axe or sawe, if hee breake it.

Beside in charters of wreacke, there is, as it were, a contract betwene them which have lost their goods by shipwracke, and them upon whose lands the said goods are driven; that the same be restored to them or their heires, if they come in due time to claime the same: and therefore it is precisely

L. ne quid. ff. de incendio, ruina, et naufragio.

forbid by the Law, that no man shall meddle with such goods as are wrecked; and such as are proved to have stolen any thing thereto are holden for robbers; for that such goods being cast on land, & recovered out of the sea, remaine still his who was the owner thereof, and descend upon his heire; neither excheat unto the King, neither to any other whom the King hath priviledged in this behalfe. And thus saith the Emperour Constantine the great, saith worthily in this case: If any ship at any time by shipwracke be driven unto the shoare, or touch on any Land, let the owners have it, and let not any Exchequer meddle with it: for what right hath my Exchequer in another mans calamitie, so that it should bring after gaine in such a wofull case as this is? And yet if no kindred appeare within a yeare and a day, or appearing, prove not the goods shipwracked to be theirs, the goods come to the Exchequer even by that Law, so much that law condemneth carelesnesse, which is written *Ubi periculum est non moramur*. And with this agree the Lawes of this Land; as taken out of these impetiall lawes; whereby it is ordered that such goods as are saved out of the wreacke, shal be kept by the view of the Sherife, or some other chiefe Officer,

L. 1. lib. 11. C. de naufragiis.

and delivered to the hands of such as are of the place where the goods were found, so that if any sue for them, & prove them to be his, or to have perished in his keeping, they shall be restored unto him without delay; otherwise they escheat unto the King, or to him to whom the King hath granted the same: And if any convey away any part of the same goods contrary to the law, and be attainted thereof, he shall be awarded to prison, and make fine at the Kings will, and yeeld damages unto the party grieved: and a wreake by the lawes of this land, is where all living things within the ship doe perish, * but if a man, a dog, or a cat doe scape out of the ship alive, it is otherwise.

For matters of contract, they are either in the petitorie, or in the Possessorie. The Petitorie is where the property of any thing is challenged, this of all other suites is the hardest, because the prooffe thereof is very difficult: for albeit the propriety of things may bee got by many meanes, as well by the law Civill, as by the law of Nations; yet it is not a thing so easie to be proved, for that there must concur many things to the prooffe of a property otherwise you shall faile in your suit, as in a case of bargain and sale, that there was such a contract between the buyer and the seller, that there was either money paid for it, or that he that sold it was content to take the buyers word for it, that delivery was made thereof, otherwise the property passeth not, but onely in some few cases, in which neither possession nor delivery is required. Lastly, that he which sold it was rightfull owner of it, otherwise can he not passe over a thing he had no right unto.

The Lordship or property of things, is bipartite; for either it is direct or full, such as men have when they have not only the thing it selfe, whereof they are Lords or Proprietaries, but also the use and commodity thereof; or else it is profitable, as is the hold of Tenants and Farmers, who have the use, gaine, and possession of the thing, but the Lord the property and rent in acknowledgement of his right and Sovereignty.

* Mes si un homme, ou un chien, ou chatte escape viue sicut que le partie a que les biens sont veigñ deins lan & jour, & proove les biens destre ses il avera eux arere per provision del Statute de Westminster. l. cap. 4. fait en les jours del Roy E. F. 1.

Institut. de rerum dimissione & singulorum ff. de acquirendo rerum dominio. l. adeo & toto titul. C. de quadriennij pre-script. l. bene

C. de acquirend. possess. l. 1. ext c. 1. de consuetudin.

The Possessorie is that right, whereby the use or possession of a thing is claimed, of which there be three sorts : for it is either in getting of the possession of that a man hath not, or in keeping of the possession of that a man hath, or in recovering and regaining of the possession of that which is lost.

The proceeding in all these Civile matters, is, by Libell concluding to the action, the partie agent giving caution to prosecute the sute, and to pay what shall be judged against him, if he faile in the sute; the Defendant on the contrarie part, securing his adversarie by sufficient suertie, or other caution, as shall seeme meete for the present to the Judge, that he will appeare in Judgement, and will pay that which shall be adjudged against him, and that hee will ratifie and allow all that his Proctor shall doe in his name: for to all these ends satisfaction in Judgement is, which is nothing else but a comse to secure the adversarie of that which is in debate before the Judge, that on what side soever the cause shall have an end, the clientes may be sure to get that, which by law shall be adjudged unto them.

SECRET.

What are the Criminall marine matters, whereof the Law Civile holdeth plea beere with us, and what proceeding they have.

And so much of those Civile Marine matters where-
of, the Civile Law heere in England usually holdeth
plea. Now of the Criminall matters which belong to that
Court, but yet by way of Commission from the Prince, and
that is that horrible crime of Piracie, detested of God and
man, the actors wherein *Fully* calleth Enemies to all, and to
whom neither faith nor oath is to be kept.

Cicer. 3 lib off.

* In an Attick
sense, for they
said $\pi\epsilon\epsilon\alpha\nu$,
 $\text{Ἀντὶ τοῦ δῶλ} \odot$:
 $\epsilon\kappa\tau\omega\iota$, Pirates,

Piracie is called of the Greeke word *πῆρα*, which is * *Deceptio* in Latin, and in English *Deceit*, for that many times

they

they pretend friendship, when they intend nothing else but roberie and blood-shed; or they are so termed of the word *mer*, that is, of their wandering up and downe, and resting in no place, but coasting hither and thither to doe mischief.

A Pirate is a Sea-thiefe, who for to enrich himselfe, either by subtilty, or open force, setteth upon Merchants and others, trading by sea, ever spoyling them of their loading, if they get the upper hand, and sometimes bereaving them of their life, and sinking of their ships.

The proceeding of these Criminall matters, is by accusation and information, and after by triall of twelve men upon the evidence, according to the lawes of this land, and the lawes of the ancient Feudes of *Lambardin*, where the like triallis, and from whence, it seemeth, this of ours was first derived. But here must wee note, that matters of reprisals are no piracies, although many times there falls out no lesse outrage in them, for spoyling and slaying of men, than doth in the other: for that Reprisals are done by the Princes commission, granted to the subject, for redresse of some injurie done to himselfe or his subject, by some other foraine Prince or subject, and amends hath beene required by law, and cannot be had, whereupon licence is given to the subject to redresse himselfe by what way he can, against the other Prince, or any of his subjects, by taking so much goods of his, as himselfe was indamaged: which course is held among Princes, the rather to afford Justice, where it is lawfully demanded. *Bartholomaeus in de Re Militari*

et Caliculus. But for that every man shall treat of him that shall treat, not so well directed by the proper lawes, as perceived by the

SECT. IV.

That the things which extraordinarily belong unto the Cognisance of the Civile Law, are of three sorts, and concerning the first, which respecteth treasons committed by Prince and Prince.

And thus much of the causes, which ordinarily doe belong unto the Cognisance of the Civile Law within this land.

land. Now it followeth, that I speake somewhat of those things wherein the Civile Law dealeth incidently, and by authoritie of the Princes; it is not the ordinarie object of the Civile law, howsoever otherwise they cannot be handsomly dealt in, but by such as have the skill of the Civile Law.

Whereof there be three sorts, the first is matters of foreign treatie betwene one Prince and another; the second is the ordering of martiall causes, whether they be Civile or Criminall in an Army; the last is the Judgements of Banners and Armes, and the decisions for challenges of rights of Honour and precedence, where any of them is in controversy.

For the first, whereas all other Nations in compasse round about us be governed by the Civile Law, and treaties are to be decided by Law (both for those things which are in question, and to be concluded by Law, and for those things which are determined by consultation and agreed upon) who is thereto to be chosen rather than a Civilian, to whom their law is knowne, as well as to themselves: and if perhaps he understand not their language; yet hee understandeth that language wherein the lawes themselves are written, and is the fittest tongue for treatises betwene Princes and Princes; because it is a common tongue of the learned of all the West part of the world, and thereby every Prince shall retaine his owne Majestie in parlying, as it were, in his owne language, and not be forced to speake in an other Princes tongue, which, no doubt, is a great disadvantage to him that shall treat; for that every Nation hath their proper *Idiom*, not so well discerned by the booke-speaker, as perceived by the Natives of the country, where it is spoken, and wherein a stranger may easily be deceived.

How much forreine Princes doe esteeme of the skill of a Civilian in these matters, it may be understood thereby, that they never, for the most part send any Embassage for the treatie of any league or matter of commerce, but that one of moe of them are Civilians. And if the care of these things be so great with them, surely the estimation of the

same ought not to be light with us: for by what lawes their leagues and negotiations. use to bee directed, by the same must ours bee ordered, so that for that point, one kinde of learning must serve for both; for that otherwise one Nation will not be convinced by the other what their capitulations are.

Surely, such as over and besides their owne experience, have the knowledge of the Civill Law, have herein a double helpe above another man that wanteth the same. First, their owne understanding, which for the most part is of like proportion as other folks is: Then the skill of the Lawes themselves, which are a quintessence of wit above other humane learning, and were either wholly composed of the mature and deliberate resolutions of such Emperours as then swayed the whole world, or were the doomes & judgments of such wise men, as then managed the whole world, and the affaires thereof under them. But who, when hee seeth a sword in it's scaberd, knoweth whether it will cut or not, although the forme thereof be a presumption, that it will: but, doe but draw it out of the scaberd, and try the blade thereof, and then shall you see the sharpenesse of it: I make no application hereof, for that my meaning by my words may be well enough knowne.

But in these matters, the wisdom of the State knowes best what is to be done, and I onely remember what other Nations doe, leaving the rest to their gravest considerations, who by precedents of former times, and men of experience, furnished with exoticke tongues, have carried this part of policie very well and safely hitherto: but now to the ordering of Martiall causes.

S E C T. 5.

What are Martiall causes, which are the second extraordinary matter belonging to the Cognisance of the Civill Law with us.

Martiall causes are either Civill or Criminall, whereof both are determinable by the Civill law. A Civill Martiall cause, is where either the Captaine or the Souldier requireth some thing that is due, and withholden from him, as his stipend, his apparell, which among the *Romans* was due twice a yeare, that is, their Sommer apparell from the first day of April to the first of September, and their Winter from thence to Aprill; his diet, which among the *Romans* was two dayes hard bisket, the third softer bread, one day wine, an other day vineger, one day bacon, and two dayes mutton; his priviledges either in cases of preferment, as to be removed from one degree to another, or in cases of immunitie, as to be freed from all servile functions, and sundry other like, which a diligent reader may gather out of the titles of the Digest and Code of militarie affaires, and other like titles which accompany them.

§. de re militari & C. eod. tit. l. 12. ff. de privilegio veteranorum: & de castrensi peculio & C. eod. tit. l. 12. C. de erogatione militaris annonæ & C. de vest. militari.

Souldiers faults are either proper to themselves, or common with others.

Those are common with others, which other men fall into, and are corrected with like ordinary proceeding as other crimes of like nature are, as man-slaughter, theft, adultery, and such like.

Those are proper which doe properly appertaine to militarie discipline, and are punished by some unusuall or extraordinarie punishment, as are these, not to appeare at Musters: to serve under him he ought not to serve: to vage or wander long from the Tents, although he returne of his owne accord: to forsake his Colours, or his Captaine: to leave his standing: to fly over to the Enemy: to betray the Hoast: to be disobedient to his Captain, Coronell, or Lieutenant, to lose or sell his Armour, or to steale another mans:

to be negligent in forage, or providing of victuall: to neglect his watch: to make a mutiny, to fly first out of the field, or other like, which are delivered in the late cited titles. Concerning this *Arrian*, who wrote the life of *Alexander the great*, thus saith; *Every thing is counted an offence in a Souldier, which is done contrary to the common discipline: as to be negligent, to be stubborne, to be slothfull,*

The punishments wherewith Souldiers are corrected, are these, either corporall punishment, or a pecuniarie mulct, or injunction of some service to be done, or a motion or removing out of their places, and sending away with shame.

By capitall punishment is understood for the most part death, or at the least beating, unlesse happily it be pardoned, either for the unskilfulnesse of the Souldier, or for the mutinie of the company, being thereto drawn by wine and wantonnesse, or for the miseration or pittie of the party offending.

All which a wise Judge moderateth according to the quality of the person, the quantitie of the offence, and the opportunitie of the time.

S E C T. 6.

That the third and last matter of extraordinary Cognisance in the Civill Law here with us, concerneth the bearing of Armes, and ranging of every man in his proper place of honour: and first of Armory.

THe last extraordinary matter that the Civile Law Judge dealeth in, is the bearing of Armes, and the ranging of every man into his roome of honour, according as his place requires; and here first of Armes. For skill in Armory, although it be a thing now almost proper to the Heraulds of Armes, who were in old time called *Feciales*, or *Cadu-ceatores*, because they were messengers of warre and peace; either to proclaime the one, or denounce the other: yet the ground thereof they have from the Civile Law, so that

thereby to this day they may be directed in their skill, or controlled if they doe amisse.

*C. ut nemo pri-
vatus prædiis
suis, vel alienis
vela regia im-
ponat, ut nemi-
ni liceat sine
Jud. auctor. sig-
na imponere. &
c. De statuis &
imaginib. ut
nemini liceat
signum salva-
toris, & c.*

*De his qui po-
tentiorum no-
mine titulos
prædiis suis
affigunt. & ibi
doct.*

*ff. de rerum di-
visio. l. san-
ctum.*

*C. de ingenuis
& manumiss.
l. ad recognos-
cenda ff. de re-
rum divisione
l. sanctum.*

*C. de mutatione
nominis l. i. ff.
de Falsis, l.
falsi nominis.*

For besides, that there are many other places in the Law which touch Armory, as appeareth by the titles here quoted in the margent, *Barthol.* himselfe maketh a speciall tra-ctate thereof, and divideth the whole matter of Armes into three ranks, according to the divers sorts of men that beare them: for some are Armes of some publick dignitie and office, as the Armes of the Legate, or Proconsull, the Armes of Bishops, the Armes of the Lord Admirall; other are Armes of speciall dignities, as Armes of Kings and Princes, which no man is to beare or paint in his house or stufte, unlesse it bee for to shew his duetie or subjection therein.

The third sort is, of those which are private mens Armes, of whom part have them by the grant of the Prince, or by authoritie of those, to whom the Prince hath given power to grant Armes to others, as hath the Earle Marshall within this Realme of England; others have taken them by their owne authoritie, which albeit in former times they might doe, as also they might take such names as every one did like of (for names and signes in the beginning were invented, for to know and discerne one man from an other) and as every man might change his name, so might hee change his signe, so that it were not done in fraud and deceit: but after it was forbidden, both that any man should change his name, because it was not thought it could be done with any good meaning, and that no man should beare Armes of his owne authoritie; and therefore Officers were appointed under Princes (as I have said) who should give Armes to such as deserved well of the common-wealth, either in warre or peace: for albeit in the beginning Armes and Colours were proper to men of warre, to avoid confusion in the hoast, and to discerne one company from an other, yet when it came to be a matter of honour, it was challenged no lesse by men of peace, than by men of warre; for true indeede is that saying of *Tully*, *Parva sunt fori*

arma,

arma, nisi est consilium domi: and the Emperour speaking of the benefit that Advocates, and such like bring to States and Common-wealths, saith thus, Advocates which breake the doubtfull fates of causes, and with the strength of their defence sundry times, as well in publick causes as in private, raise up those that are false, and releve those which are wearied, doe no lesse good unto man-kinde, than if by warre and wounds they saved their parents and countrey: for we (saith hee) doe not count, that they onely doe warre for our Empire, which do labour with sword, shield, and target, but also our Advocates, for indeed the Advocates or Patrons of causes doe warre, who by confidence of their glorious voyce doe defend the hope, life, and posteritie of such as be in danger: thus saith hee; and thereupon commeth that distinction of *Castrense peculium, Et quasi castrense peculium*, signifying thereby, that albeit Counsellours to the state, Lawyers, and such like be not actuall warriors, yet they are representative warriors, and doe no lesse serve the Common-wealth than they. The Souldier riseth betime in the morning, that he may goe forth to his exploit, the Advocate that hee may provide for his Clients cause; hee wakes by the trumpeter, the other by the cock; he ordereth the battell, the other his Clients businesse; hee taketh care his tents bee not taken, the other that his Clients cause be not overthrowne: so then either of them is a warrior, the one abroad in the field, the other at home in the Citie. Besides *Barthol.* treateth in that place, what things are borne in Armes, either naturall, as beastes, birdes, fishes, mountaines, trees, flowres, sunne, moone, starres, or such like: or artificiall, not taken from things existent, as colours, simple and mixt, divided by halves or quarters, or by lines, direct, crosse, overthwart, or such other; then how each of these is to bee carried, wherein Art must follow Nature, that every thing figured, be borne according to the nature of that which it doth figure, and not otherwise: and therefore as in ensignes, flagges, or standards, the speare or shaft goeth before, & the streamer or colours

*L. Advocati C.
de Advocatis
diversorum iu-
dicorum.*

follow after, so the face of every creature that is figured or described in the banner or hatchment, must looke unto the shaft or speare; unlesse a man beare two creatures, one looking toward the other, for then this observation hath no place, for vaine it is to conjecture where things are certain, otherwise it is the nature of the face to goe before, and the body to follow after: and the like reason is of the parts of every creature which is likewise borne in Armor, which are distinguished by before and behinde, whose site must be such, that the head looke to the speare, otherwise would it seeme to goe backe like a monster: but if the forepart alone of any creature be borne in a Scutcheon, as often it happeneth that men give onely a Lyon, Beare, or Bulls head for their Armes, then must not the head directly looke unto the shaft, but aside: further, every of these creatures be so described in the coate, as his vigour and generositie be best set out, whether it be a fierce or savage beast, or a milde and gentle creature. But for colours, his rule is, that the noblest colour be put in the first part of the field, howsoever the coate be divided, quarter or pale. And of colours, the golden colour is the chiefeest, as that which doth figure the Sunne, which is the fountaine of light, which is most acceptable to every mans eye, The next is Purple or Red, which doth figure the fire, that is the highest and noblest of the foure Elements, and next the sunne it selfe in dignitie. The third is Blew, of the Herald's called Azure, and *Ceruleus* in Latin, which figureth the Aire, which is a cleere and transparent body, and most capable of light, and commeth in nobility next after the fire. The fourth is White, which commeth neere to the Light, and therefore is more noble than Black, that draweth neere to darknesse, and therefore is the basest of all Colours. And for mixt colours, as every one hath more or lesse of White or Black, so either they are nobler or baser in reputation or degree. And thus much in generall as concerning the knowledge of Armes.

SECT. 7.

Concerning the Places and Successions of Princes, and other honourable Personages, and first of their Places.

NOW followeth what the Civile Law holdeth, as concerning Princes, and other honourable Persons, and their successions and places, which a grave Judge of this Land hath anciently acknowledged to belong unto the Civile Law.

*Nedham 37.
Hen. 6. fol. 21.*

By the Civile Law, all power comineth from God, as the Scripture teacheth, and among powers the two greatest are the Empire, and the Priesthood; for as God hath ordeined the one to rule the outward man, and to bring all his actions within the compasse of reason, and so to establish common-wealths, and to order the same: So also hath hee provided the other for the instruction of the inward man, and the planting of Religion among men.

By the Empire, I understand, not onely the Empire of Rome (which sometimes bare rule over most part of the world, at the least ten mighty Kingdomes, which now are growne into particular Empires and Monarchies themselves) but also every severall Kingdome, which acknowledgeth no other Emperour than his owne Sovereigne; for howsoever they differ in name and title, yet is the office it selfe all one: For every one of them is Gods immediate Vicar upon earth in their owne kingdomes, for matters appertaining unto Justice. Whereupon the Civile Law gives them very honourable titles, sometimes tearing them Gods upon earth, for the great authority they have over other men under God; sometimes Ministers of God, for the service they doe God in their common-wealths; sometimes most holy, and most religious, for the care they ought to have about Religion, and correcting of those things which are done against the feare of God; for a King ought in all things to propound the word of God before him for his rule, and to follow the doctrine of the Apostles; sometimes they

*ff. de leg. 2. l. 1.
ff. de legat. 2. l. 1.
C. 4. tit. 13.
C. 1. tit. 3. l. 56.
C. 1. tit. 1. l. 5.*

C. 1. tit. 1. l. 5.

they are called most milde, because a King in all the course of his life, but specially in matters of punishment ought to imitate the mercie and favour of Almighty God.

C. 5. tit. 4. l. 23.

*L. fin. C. de ver.
signif. c. de dig-
nitat. l. 8 lib. 12.*

*1 Petrie. 2.
ver. 13.*

*Abc. signific.
via ext' de pe-
nitentiis, &c.
C. 6 t. 23. l. 19.
C. de testib. l.
omnium.*

Although the Emperour or King be reckoned among his Nobilitie, because he should not be puffed up with the glorie of his place, & conceive he were of a more excellent mould than the rest, when indeed wee are all of one, and the selfe same clay; yet he is both by the ordinance of God and man *ὡς ὑπέρχων*, (as the Apostle tearms him) among them, that is, one who is Supream Sovereigne above the rest, and whom they ought in all things to obey, so it be not against the Law of God, and common Justice; for himselfe is in steed of the whole Law, yea he is the Law it selfe, and the onely interpreter thereof, as in whose breast is the whole knowledge of the same; which albeit the Doctors doe hold with a qualification, as thereby understanding, not onely the Princes person, but also his Chancellours, both which put together, make up a perfect state of a Prince: yet forasmuch as all that benefit of wisdome and government that commeth from them unto the Common-wealth, is principally derived from the Prince, as from the head, who hath vouchsafed to make them, as it were, members of his body, and so by them to derive the power of his government unto all; it may be rightly said, that in the Princes breast, resteth the fulnesse of all knowledge, for the well ordering of his common-wealth; for what they see, they see for him, what they heare, they heare for his use, what they understand, they understand to doe him service, and so consequently of the rest of the actions of the minde and body, they obey the Prince as their Sovereigne: so then as the Prince hath the primacie in the government of his common-wealth, and all those which governe under him, governe by, and for him; so also hath he the precedencie, and *protoclesie*, or foresitting in all assemblies before the rest, and such other as have precedencie or foresitting, have it by the Princes indulgencie.

*C. 7. tit. 37 l. 3.
in princip.*

Next unto the Prince is his Queene, who shineth by the beame,

beames of her King, and hath the like prerogative as himselfe hath. After them comes next in place the Kings Children, because children in a sort are partakers of their Fathers dignitie: but yet among children there is a difference, that the male be preferr'd before the female, & among those which are males, the eldest have the preheminence in going, sitting, speaking, and other like matters of respect. After the Kings Children follow in the next ranke Dukes, after them Marquesses, then Earles, fourthly Vicounts, and last Barons; all which have dignities either heritable, or granted by the bountie of the Prince, whereupon their nobilitie is founded, and whereby they onely and no other are to be accounted Peeres of the Land. Among these, for courtesie sake, are reckoned such as descend of Noble Houses, every one according to his degree, untill the third generation: and the daughters of these great Houses, so long as they marrie to any that are in degree of Peeres, retaine their fathers dignitie, but if they marrie under the degree of Peeres, then they lose their fathers place, and follow the degree of their husband; which notwithstanding is in practice otherwise heere among us, but without any warrant of Law. The like is of the Widowes of the Peeres, who while they live sole and unmarried, retaine the nobilitie of their husbands; but if they marrie, then they follow the condition of their second husbands, be it honourable or otherwise.

L. 1. c. de dignitat. lib. 12.

*L. Mulieres 13.
C. de dignit. l.
12. c. de eques-
stri dignitat. l.
unic. lib. 12.*

Next in place after Peeres come Knights, whereof *Cujacius* following the moderne *French* Heraldrie, maketh three sorts; one whereof hee calleth *Chevalliers*, the other *Bannerets*, the third *Bachelers*, but setteth downe no proper difference of the one from the other; and therefore I leave that to be enquired of those, which shall be curious thereof. Among the *Romans*, for ought that I have read, there was but one order of them, and they were next in degree to the Senatours themselves, as with us they are to the Peeres.

Cujacius lib. de Feudis.

L. cum re. c. de Nuptiis.

Betweene Knights and Doctors of the Law, hath ever

been question for precedence, since either of them hath been in credit in Common-weales, as may appeare both by the comparison that *Tully* maketh betweene *Lucius Murena*, a Knight of Rome, and *Publ. Sulpitius* a Lawyer, either of them standing for the Consulship, in his eloquent Oration made for *Murena*, and many disputes of *Bartol* and *Baldus*, arguing the case to and fro, which although it be yet disputable in forreine Countries, where the Civile Law is in credit; yet here among us where all preferment is taken from it, and the Professours thereof are shut up, as it were, into a narrow corner of their profession, it is without controversie, and the prioritie thereof indubitable: but yet this is the resolution of those which are learned in this point, that in such acts as concerne learning, a Doctor is to bee preferred before a Knight, but in acts that concerne militarie knowledge, a Knight takes place before a Doctor: but in other acts which are neither proper to the one, nor to the other, first are preferred such Doctors as attend about the Prince; secondly such Knights as waite upon the Prince; thirdly such Doctors as being not about the Prince, are excellent in learning; fourthly come Knights without any place of preferment; lastly Doctors of meaner gifts and place.

Although by the Civile Law there be no Gentlemen of title under Knights, but all the rest went under the name of people, yet in other common-wealths there are, and with us bee, even in this ranke, which have names of preheminance, whereby they are in degree above the rest; as with the French there are *les Gentilhommes*, and *le Gens de ordinaances*, and with us are Squiers and Gentlemen, all which give Ensignes or Coat-Armours, and thereby are distinguished from the meaner people: in which respect *Bartol* calleth them Noble, but yet of a weake nobilitie, for that it hath no further prerogative in it, than that it makes them differ from the baser sort of people.

Of these two sorts of Gentlemen with us, the Squier hath

*Chassaneus de
gloria mundi
lib. 9.*

*Bartol tractus
de Insign.*

hath the priority,* who seemes by the common name wee give him in Latin, to have had his origen, either for that hee carried the Armour of the King, Duke, or other great personage, as wee see not onely in holy Scriptures *Saul* and *Jonathan* had their Armour-bearers; but in Poëts and other prophane stories, *Patroclus* was *Achilles* Armour-bearer, and *Clitus* great *Alexanders*: whereupom some write that *ὄπλίτης* *sive* *ὀπλόφορος*, which is he whom we call *Armiger* in Latin, is a footman, that with a speare, shield, or head-piece, followeth an armed Knight in battaile, or rather as some other suppose, it is the footman himselfe armed in the field: howsoever the word be taken, this is sure, that these were men of good account in the old time, as those which won themselves credite out of warre, and so their estimation remained in their posteritie; and as those were in time before, so are these which are in our dayes, as descending, for the most part, from their worthy Ancestours.

There is no dubbing or creating of these by the Princes hand, or him to whom the Prince hath given authoritie, as it is in the creating of the Nobilitie, and the making of Knights, but every one whom the Captaine hath vouchsafed that service, is by the service it selfe a Squier; and that not onely hee which hath done the service in warre, but also such which have done any equivalent service in peace, as Lieutenants, and Sherifes of Shires, and Iudices of Peace within their Countie: for even in this, as in other Promotions hath that distinction of the Law place, of *Castrensis peculii*, & *quasi castrensis*, whereby service of the Common-wealth at home, is levelled and made equall with that abroad. Gentlemen have their beginning either of blood, as that they are borne of worshipfull parents, or that they have done some thing worthily in peace or warre, whereby they deserve to beare Armes, and to bee accounted Gentlemen, for hee is a Gentleman who is commonly so taken and reputed.

Homer. Iliad.
Plin. lib. 35.
natural. histor.

* And so it might have seemed by the English name, for though we now call this kinde of Gentleman an Esquier, yet our Ancestors called such a one *Soyld-enaps*, a shield-knave, that was the knave (or as wee say now, the boy or servant) that used to beare a Shield or other Armour after his Master in the warres: and this is answerable to the Latin *Armiger*, and to the originall of the dignity; where-as the word Esquier (which we now use) is of the French, properly noeth an other thing. *L. r. c. de dignitat. lib. 10. c. 12.*

And this is the last and lowest order of them to whom Law doth allow any challenge of precedencie.

S E C T. 8.

Concerning the Succcession of great Personages in their places of Honour.

NOW it followeth, that I speake something also, how great personages one succcede an other in their places of honour.

And first, to begin with the Empire it selfe, as the greatest earthly dignitie under God, albeit in the beginning it were raised up by no right, but by usurpation, *Julius Caesar* changing the former government of the State, and challenging to himselfe the whole managing of the same; yet after it came to an orderly course, inso much as hee that had the present possession of it, disposed it to his best liking by his last Will and Testament. So *Julius* himselfe devised it to *Octavius* his sisters sonne: and albeit that devise tooke not effect, by reason of the treason that was wrought against *Julius* owne person, so that *Octavius* was faine to recover it by an other right, even by the death of *Lepidus* and *Antonius* his colleagues in office; yet that very Will of *Julius* gave a pretence to *Octavius*, who after was called *Augustus* (because hee did increase the Empire with many worthy Victories) to stand for the inheritance of the Empire; in consideration of which title the Senate and people of *Rome* more easily submitted themselves unto his government. *Augustus* in like sort bequeathed it to *Tiberius*, and *Tiberius* to *Caligula*: and so it came from one to another, untill some of them by cruelty and licentiousnesse of life, became so odious to God and man, that the people rose against them, and bereft them of that libertie, which they had prescribed in appointing of their Successors, and somewhiles themselves, and somewhiles the Souldiers made choise of whom they thought good, or by whom they thought best to be rewarded. And thus the right of Succes-

sion

sion unto the Empire, was toft up and down many hundred yeares betwixt Inheritance, Bequest, and Election, untill at the last, it came unto that established state, as now it is in, and serled Electours of the Empire, so often as it happened to be voide. Succession in Kingdomes, in most part of the world, in former time hath beene, and at this day is by right of blood, (a few onely excepted, which are Elective, as the Kingdome of *Poland* is at this day) and in Succession the eldest sonne taketh place before the rest; and if there be no heire male, then the eldest daughter succeedeth in the kingdome, and her issue: for Kingdomes (as also succession in other dignities) are impartible. And yet *France* (to exclude *Edward* the third from the inheritance of the Crowne thereof, who descended of *Isabel* the sister of *Charles* the faire, and so was next heire male unto the kingdome of *France*) alleaged for themselves the Law *Sallick*, pretending none which claimed by the woman, albeit he were the next heire male in blood, was to succeed, as long as there were of the male line alive, how farre soever they were off in degree from the last King deceased. But this is but a meer device of the *French*, fathered upon some rotten Record of that part of their Nation, called *Salis*; of whom otherwise they have nothing memorable to speake of, as being the basest Nation among them all, of whom they report their people to have bin compounded: but this devise served their turne then, whether it were anciently invented, or newly coyned. But howsoever they oppose themselves against womens government, as *Bodine* their countrey-man hath of late stretched out the strength of his wit to devise reasons against the government of that sexe: certaine it is, that the Law of God hath allowed it, as it appeareth in the example of *Debora*, who being a Prophetesse, governed *Israel* fortie yeares, and by her direction got the *Israelites* a mightie victorie over *Sisera* the Captaine of the hoast of *Jabin*: and wee among other Nations, have found by experience, *gunaicocratie* or womens government is nothing so unfortunate, as *Bodine* would make us beleeve it is.

*Bodin. lib. 6. de
repub.*

For both in our late Queene, and also in her sister, (except only the case of Religion, wherein she followed the error of the time, and was carried away more with zeale than knowledge, and thereby is more to be pittied than to be envied) what is in their government, the wisest Man-Prince in the world would not desire to be in his owne Regiment? for what is either in their private carriages, (so you give no care to virulent and malicious tongues, who report surmises for substances, and tales for truths) or in their publicke government, (so you lay not other mens faults to their charges) that any man may justly blame? For that I may passe over the rest of their Heroicall vertues, fit for women of their State (specially the late Queene, who was peerlesse among all Queenes that ever went before her, and unmatched, as I verily doe beleeve, by any that ever shall succeed her) as their magnanimity whereby they subdued, not only their domesticall enemies, but vanquished even their foraine foes, were their designements never so dangerous, not shewing any token of discouragement, either in the treasonable attempts of the one, or in the malicious complotments of the other.

What an excellent worke of hers was that, that then when all her neighbour Kingdomes round about her were drunke with the cup of the fornication of the whore of *Babylon*, she alone came out of *Babylon*, and so continued constant to the end, mangle the threats of the red fierie Dragon, and the floods of water he cast out of his mouth after her? How excellent did she shew her selfe in those two vertues which doe chiefly preserve Princes States, that is, Mercy and Judgement, the Records of her time doe shew, so that I may spare to remember any by name, which happily would not be well taken.

And yet, truth it is, that mens government is more agreeable to Nature than womens is, whom God in the beginning put in subjection under man, and who for the most part are by nature weake in body, and thereby unable to put in execution the great affaires of a Kingdome, and unsettled.

settled in Judgement, and so hardly can determine that which is right, and settle themselves thereupon: yet by the numeration of certaine ill governing Queenes, to conclude a generalitie against all government of women, is but an ill kind of arguing; for even by the like reason a man might conclude against Kings, of which sort, although there hath beene many good, whom God hath used as instruments to worke great good unto people in every Kingdome, yet more of them have beene evill, as the Stories of every country will shew; and to abridge God of his power, that hee cannot as well governe by a woman as by a man, when it is his good pleasure so to doe, were great injurie to God, and a great discredit to all woman kind: but to returne thither where I left.

In succession of Kings a question hath beene, where the King hath had sons both before hee came to the Kingdome and after, which of them is to succeed, hee that was borne before the Kingdom, as having the prerogative of his birth-right, or he that was borne after, as being brought into the world under a greater planet than the other, neither hath there wanted reason or example for each side to found themselves on: for *Xerxes* the son of *Darius* King of *Persia* being the eldest birth after his father was enthronized in the Kingdome, carried away the Empire thereof from his brother *Arteminus* or *Artabazanes* borne before his father came to the royall possession thereof: so *Arsecus* the son of another *Darius* borne in the time of his fathers Empire carried away the garland from his brother *Cyrus* borne before the Empire: so *Lewes* Duke of *Adilan* borne after his father was Duke, was preferred to the Dukedome, before his brother *Galliasin* borne before the Dukedome. But these examples notwithstanding, and the opinion of sundry Doctors to the contrary, common use of succession in these latter dayes hath gone to the contrary, and that not without good reason: for that it is not meet, that any that have right to any succession by the prerogative of their birth-right (such as all elder brethren have) should be despoiled there-
of

Herodot. lib. 4.

Juslin. lib. 11.

*Plutarchus in
vita Artaxer-
xis.*

*Guicciard. l. 1.
Hisor.*

*Blondus Decad.
2. lib. 6.*

*Mich. Ritis l. 2.
de regib. Hun-
gar. Sigeb. in
Cronic.*

of, except there be some evident cause of incapacity to the contrary.

*Bartol. l. si vi-
uā matre c. de
begis maternis
primogeniti
filii non exclu-
dunt secundo-
genitum in
regno.*

*ff. de liberis &
posthumis l. in
suis.*

*Pausanias lib.
3 Histor.*

*Plutarch in vi-
ta Lyncurg.*

Besides, sundry contentions have risen in kingdomes between the issue of the eldest sonne of the King, dying before his father, and the second brother surviving the father, who should reigne after the father, the Nephew challenging the same unto him, by the title of his fathers birthright, and so by the way of representation; for the eldest sonne, even the father yet living, beares the person of the father, how much then rather his father being dead? Whereupon the Law calls as well the sonne *Filiusfamilias*, as the father *Paterfamilias*, for that the sonne, even during the fathers life, is as it were Lord of his fathers state: the other claiming as eldest sonne to his father at the time of death; upon which title, in old time there grew a controversie betweene *Arenus* the sonne of *Acrotatus*, eldest sonne to *Cleomines*, King of *Lacedamon*, and *Cleomines* second sonne to *Cleomines*, and uncle to the said *Arenus*, but after debate thereof, the Senate gave their sentence for *Arenus* right, against *Cleomines*: besides *Eunomus* King of *Lacedamon* having two sonnes, *Polydectus* and *Lyncurgus*, *Polydectus* dying without children, *Lyncurgus* succeeded in the kingdome, but after that he understood *Polydectus* widow had a childe, he yeelded the Crown to him wherein he dealt farre more religiously than either did King *John*, who upon like pretence, not onely put by *Arthur Plantaginet* his eldest brothers sonne, from the succession of the kingdome, but also, most unnaturally, tooke away his life from him; or King *Richard* the third, who most barbarously, to come unto the kingdome, did not onely slay his two innocent Nephewes, but also defamed his owne mother, in publishing to the world, that the late King his brother, was a bastard. Our Stories doe not obscurely note, what a controversie of like matter, had like to have growne betweene *Richard* the second and *John of Gaunt* his uncle, and that he had procured the counsell of sundry great learned men to this purpose, but that hee found the hearts of sundry Noble-men of the Land, (and specially the Citizens

of London) to be against him; whereupon hee desisted from his purpose, and acknowledged his Nephewes right. Yet notwithstanding, when as *Charles* the second King of *Sicile* departed this life, & left behinde him a Nephew of *Charles* his eldest sonne, surnamed *Martellus*, and his younger sonne *Robert*, and the matter came in question which of them should succeed, *Clement* the fifth gave sentence for *Robert* the younger sonne of *Charles* deceased, against the sonne of *Martellus*, being Nephew to his Grandfather, and so caused the said *Robert* to bee proclaimed King of *Sicile*; which was done rather upon displeasure, than that there was conceived against the Emperour *Frederick*, than that there was just cause so to doe. And yet *Glanvill*, an old reverent Lawyer of this Land, and Lord chiefe Justice under *Henry* the second, seemeth to make this questionable here in England, who should be preferred, the Uncle or the Nephew.

Vicerum in vlt
ta Hen. 7.

Clem. c. pastora-
lis de re iudica-
ta.

Glanvill. l. 7. c. 3

And thus much of succession of Kings, wherein the eldest among Males hath the prerogative, and the like to Females, if there be no Male; for that a Kingdome is a dignitie undivisible, and can come but to one, be he Male or Female; for that otherwise great governments would come to small Rules and Territories.

And the like that is said of Kingdomes, is to be held of all Dignities under Kingdomes, where the eldest sonne is to be preferred before all his other brethren, and they successively one before an other, if there be no issue left of them that goe before; and the Male line is to be preferred before the Feminine, and the Feminine before all the rest of the kindred, so it be not a Masculine Fend, and the same intailed upon the heire Male.

And thus farre, as concerning the matters wherein the Civile Law dealeth directly or incidently within this Realme. Now it followeth, to shew how much of all those Titles of the Canon Law, which have beene before set downe, are here in practice among us.

CHAP. II.

SECT. I.

*Concerning the use which the Canon Law hath in this Realme:
That some Titles thereof are abolished enely individually,
and some others are altogether.*

OF those Titles of the Canon Law, which before have
beene rected, some are out of use here with us in
the singular or *Individuum*, by reason of the grosse
Idolatrie they did containe in them; as the Title of the Au-
thoritie and use of the Pall, the Title of the Masse, the Title
of Reliques and the worshipping of Saints, the Title of Monks
and Regular Canons, the Title of the keeping of the Eucha-
rist and Creame, and such other of like qualitie; but yet are
retained in the generall: for in stead of them, there are sub-
stituted in their places holy worships, tending to the like
end of godlinesse those other did pretend, but void of those
superstitious meanes the other thought to please God by;
and so in stead of the Masse hath come in the holy Commu-
nion; and in place of worshipping of Saints, hath succeeded
a godly remembrance, and glorifying of God in his Saints,
and so of the rest, whereof there is any right use within the
Church.

Some other are out of use as well among the Civile as
Criminall titles, because the matter that is therein treated
of, is knowne notoriously to belong to the consulaunce of the
Common Law at this day, as the Titles of Buying and
Selling, of Leasing, Letting, and taking to Farme, of Mor-
gaging, and Pledging, of Giving by deed of gift, of Deten-
ting of Collusion and Cozenage, of Murder, of Theft, and
receiving of Thieves, and such like.

S E C T. 2.

That the *Tales* lastly mentioned, did anciently belong unto the Court Spirituall, and the reasons which moved the Author so to beleave: *The first Reason.*

And yet, I doubt not, but even these matters, as well Civil as Criminall, or most of them, were anciently in practise, and allowed in Bishops Courts in this Land, among Clerks, to the which I am induced by three Reasons: First, that I finde not only the forreign Authours of the Decretals, but also the domesticall Authours of the Legatine, being almost excellent wise men, as the Stories of their severall ages do, report to have enacted these severall constitutions, and to have inserted them, not only in the body of the Canon Law, but also in the body of the Ecclesiasticall Lawes of this Land, and that some wise men, sundry yeares after their ages, doe write and comment upon the same, as things expedient and profitable for the use of the Church, and the government of the Clergie in those dayes, neither of which, I doe presume, they would have done, if in those ages there had not beene good use and free practise of them.

S E C T. 3.

The second Reason.

Secondly, that I finde in the Code of *Justinian* by sundry Lawes, some of his owne making, some others of other Emperours before his time, even from the daies of *Constantine* the great, Bishops in their Episcopall audience had the practise of these matters, as well Criminall as Civile; and to that end had they their Officials or Chancellours, whom the Law calleth *Ecclesiadici*, or *Episcoporum Ecclici*, that is, Church-Lawyers, or Bishops-Lawyers, men trained up in the Civile and Canon Law of those ages, to direct them in matters of Judgement, as well in Ecclesiasticall Criminall matters, as Ecclesiasticall Civile matters.

And that these which now are Bishops Chancellours, are the very selfe same persons in Office; that anciently exercised Ecclesiasticall Jurisdiction under Bishops, and were called *Ecclesiastici*, it may appeare by that which *Papius*, an old ancient Historiographer cited by *Gothofred*, in his Annotations upon the foresaid Law *Omnes* in the Code, & title de *Episcopis* and *Clericis*, and upon the *9. Priores* writeth of them, who saith thus, That *Ecclesiastici* or *Ecclesii* were those that were aides & assistants to the Bishops, in their Jurisdictions, not strict or bound to one place, but every where through the whole Diocesse, supplying the absence of the Bishop, which is the very right description of the Bishops Chancellours that now are; who for that they carry the Bishops authority with them every where, for matters of Jurisdiction, and that the Bishop and they make but one Consistory, are called the Bishops Vicars generall, both in respect their authority stretcheth itselfe throughout the whole Diocesse, and also to distinguish them from the Commissaries of Bishops, whose authority is onely in some certaine place of the Diocesse, and some certaine causes of the Jurisdiction, limited unto them by the Bishops, and therefore are called by the Law *Judices* or *Officiales foranei*, as if you would say, *Officiales astricti cuidam foro diocesanos tantum*.

Gloss. in Clement. 2. de Rescriptis.

Baldus l. aliquando ff. de officio Proconsulis.

Couar. li. 3. variarum resolut. 6. 10. num. 4. Sbroxius lib. 1. de vicario Episcopi. q. 46. num. 2. 4. 12. et 13.

So that it is a very meere conceit, that a certaine Gentleman, very learned and eloquent of late hath written, The Chancellours are men but of late upstart in the world, and that the Doct. of Bishops hath brought in Chancellours, whereas in very deed, Chancellours are equal, or neere equal in time to Bishops themselves, as both the Law it selfe, and Stories doe shew: yea Chancellours are so necessary Officers to Bishops, that every Bishop must of necessity have a Chancellour; and if any Bishop would seeme to be so complacit within himselfe, as that he needed not a Chancellour, yet may the Archbishop of the Province wherein he is, compel him to take a Chancellour, or if he refuse so to doe, put a Chancellour on him: for that the Law doth presume, it is a matter of more weight, than one man is able to sustain to govern

governe a whole Diocesse by himselfe alone; and therefore howsoever the nomination of the Chancellour bee in the Bishop, yet his authoritie comes from the Law, and therefore he is no lesse accounted an Ordinarie by the Law, than the Bishop is. But truth it is, not the sloth of the Bishops, but the multitude and varietie of Ecclesiasticall causes brought them in, which could not bee defined by like former precedents, but needed every one almost a new decision. And the reasons why Princes in the beginning granted to Clergie men these causes & their Consistories, (for from Princes were derived in the beginning all these authorities, as also the Religion it self is settled & protected in kingdoms by Princes, before there can be had a free passage thereof) were. Fir st that the Clergy-men therby might not be drawn from their prayer and exercise of divine service, to follow matters of suits abroad: 2^d, that they were like to have a more speedy & better dispatch, & more indifferency before a Judge of their owne learning, than before a Judge of another profession; for this is true, and ever hath beene, and I feare ever will be unto the end, that is said in the Glosse, and is in common law, *Laici oppida semper infesti sunt Clericis*: 3^d, lastly, That Clerks suits and quarrels should not be divulged and spread abroad among the Lay people, and that many times, to the great discredit of the whole profession, specially in criminall matters, wherein Princes anciently so much tendered the Clergie, that if any man among them had committed any thing worthy death, or open shame, he was not first executed, or put to his publick disgrace, before he was degraded by the Bishop, and his Clergie, and so was executed and put to shame, not as a Clerk, but as a Lay malefactor; which regard towards Ecclesiasticall men, it were well it were still retained; both because the consideration thereof is reverent, and worthy the dignity of the Ministerie, whose office is most honourable, and also for that it is more ancient than any Papistlicall immunitie is.

*Hofstiensis in
summa de offi-
cio Vicarii nu-
mero 2. in fine,
nominationem
ab Episc. pote-
statem vero à
jure recipiunt.*

SECT. 4

The third and last Reason.

*Glanvill lib. 13.
cap. 15 de Legi-
bus Anglie.*

*Idem lib. 13.
cap. 25.*

*Idem lib. 7. cap.
18.*

Anno 24. Ed. 1.

THE third reason that moves mee that I should beleue, that these Titles sometimes were here in exercise among us in the Ecclesiasticall Courts, is, that I find *Glanvill*, who himselfe lived under *Henry* the second, and was Lord chiefe Justice of England in his dayes sort to the Ecclesiasticall Courts, the plea of Tenements, where the suit is betweene two Clerkes, or betweene a Clerke and a Lay man, and the plea is, *De libera elemosina fratri Ecclesiastici, & non potitur inde recognoscere*; whether the frank fee be Lay or Ecclesiasticall: where also is farther added, that if it be found by the verdict of legall and sufficient men, that it is of Ecclesiasticall fee, it shall not bee after drawne to Lay fee, no though it be held of the Church, by services thereunto due and accustomed: secondly, whereas land is demanded in marriage by the husband, or the wife, or their heire, and the demand be against the giver, or his heire; then it shall be at the choice of the demander, whether he will sue for the same in the court Christian, or in the secular Court: For saith he, it pertaineth unto the Ecclesiasticall Courts to hold plea of dowries, which he calleth *Mortuagium*, if so be the plaintife so make choice of those Courts, for the mutuall assistance that is there made betweene the man, and the wife, for marriage to be had between them, and there is a dowry promised unto the man by the womans friends, neither shall this plea bee carried unto the temporall Courts, no though the lands be of Lay fee, so that it be certaine the suit is for a Dowry, but if the suit be against a stranger, it is otherwise: Again, the Kings prohibition for bidding the Clergie the dealing in many things which are of Lay fee, forbids them no one thing that is of Ecclesiasticall fee, and to shew the Princes meaning precisely therein, that it was not his intent by that Prohibition to restrain the Ecclesiasticall Judges for proceeding in matters of Ecclesiasticall fee, hee lets downe

in

in very termes these words (Recognizances touching Lay fee) as though he would hereby signifie to all men, that he would not touch matters of Ecclesiasticall fee, which did then wholly and properly appertain to the triall of the Christian Court, as hath bene before vouched out of *Glanvill*; who for the place he then held, may be thought to have knowne the Lawes of England, as then they stood, and the right interpretation thereof, as well as any man then, or now living. And yet because there were some things of Lay fee, which the Clergie then had cognisance of, and as yet have in some measure; as causes, and matters of many chattels, and debts, rising out of Testaments, or Matrimonie, because hee would have whatsoever belonged to the Clergie to be undoubted, excepteth them from those things which belong to the Crown and dignity, and leaveth them to the ordering of the Christian Courts; which is nothing else but an affirmance of that which *Glanvill* and the rest of the ancient English Lawyers, *Bracton* and *Britton* said before.

Addē hereunto the provinciall Constitution, *Æterna de pace*, made in the dayes of *Henry* the third, which plainly shewes, that in those dayes all personall suits betwene either Clerk & Clerk, or between Lay-men complaynants, & Clerks defendants (for ever the Plaintiff must follow the Court of the Defendant; which to the Ecclesiasticall men then was the Ecclesiasticall Court) were tryed by the Spiritual Law, & not by the Temporal Law: which practise for that it doth accord with the judgement of those ancient Lawyers that have bene before cited, and with the Prohibition it selfe, which there restraineth only calling of Lay men to make recognizances of matters of Lay fee; it may be a great argument, that these things were of the Ecclesiasticall right in those dayes: from which I see not how the Ecclesiasticall Courts are false, for I see neither Law, nor Statute to the contrary; unless perhaps they will say the Statute of the 15. of *Henry 3. cap. 19.* took the same away, as being hurtfull to the Kings Prerogative royall, and repugnant

pugnant to the Lawes, Statutes, & Customes of this Realme, which whether they be, or be not taken away by the stroake of that Statute, I leave it to men of better experience in these matters than my selfe to judge.

But yet this I finde by experience to be true, That where there are two divers jurisdictions in one Common-wealth, unlesse they be carefully bounded by the Prince, & an equall respect carried to both of them, so farre as their places, and the necessary use of them in the Common-wealth requires, as the advancement of the one increaseth, so the practise of the other decreaseth, specially if one have got the countenance of the State more than the other: which is the onely cause at this day of the overflowing of the one, and the chiding of the other, but it is in his Sacred Majestie to redresse it, nor by taking any thing from that profession that is theirs, but restoring to this profession, that which is their owne: but hereof *sup. Sec.*

S E C T. 3.

That some titles of the Canon Law are granted to be of absolute use with us, and that of some other there is question made.

FOR the rest of the matters that belong to the tryall of the Ecclesiasticall Courts, some are acknowledged to be absolutely in use, some other are challenged to be but in a certaine measure in use.

In absolute use are those which never had any opposition against them; which almost are those alone which belong to the Bishops degree or order; for all things which come within the compasse of the Ecclesiasticall Law, are either belonging to the Bishops degree, or his jurisdiction: To his degree or order belong the ordering of Ministers & Deacons, the confirmation of Children, the dedication of Churches and Churchyards, and such like, none of which have beene challenged at any time to belong to any other Law. The second sort is of them that belong to the Bishops

shops jurisdiction, which is partly voluntary, partly litigious: Voluntarie is, when those with whom the dealing is, stand not against it; but litigious it is, when it is oppugned by the one part or the other; of this latter sort many things in sundry ages have beene called in question, but yet rescued and recovered againe by the wise and grave Judges themselves, who have found the challenge of them to be unjust. But what doth belong to either of them in private, or what causes doe appertaine to the whole Jurisdiction in generall, because they have beene already particularly set downe by that famous man of worthy memory *Dottor Cosin*, in his learned Apologie for certaine proceedings in Ecclesiasticall Courts; I will not make a new catalogue of them, but send the Reader for the knowledge thereof unto his Booke; but yet in my passage will I note, which of them have beene most chiefly oppugned, and as occasion shall fall out, speake of them.

Cosin in his Apologie Part 2. c. 2.

PART. III.

CHAP. I.

SECT. I.

How the Jurisdiction which is of Civile and Ecclesiasticall cognisance, is impeached by the Common Law of this Land: and first of the impeachment thereof by the Statute of Præmunire facias.



And thus much as concerning those parts of the Ecclesiasticall Law, which are here in use with us: Now it followeth, to shew wherby the exercise of that Jurisdiction which is granted to bee of the Civile and Ecclesiasticall cognisance, is defeated and impeached by the Common Law of this Land, which is the third part of this Division.

R

The

The impeachment therefore is by one of these means, by *Premunire*, by *Prohibition*, by *Injunction*, by *Superfedeas*, by *Tuldraco*, or *Quare impedit*; but because the four last are nothing so frequent, nor so harmful as the others, and that this Booke would grow into a huge volume, if I should prosecute them all, I will onely treat of the two first, and put over the rest unto some better opportunitie.

What is a
Premunire.

A *Premunire* is a writ awarded out of the Kings Bench, against one who hath procured out any Bull, or like procees of the Pope from *Rome*, or else, where, for any Ecclesiasticall place, or preferment within this Realme; or doth sue in any foraine Ecclesiasticall Court, to defeat or impeach any Judgement given in the Kings Court, whereby the body of the offender is to be imprisoned during the Kings pleasure, his goods forfeited, and his lands seized into the Kings hand, so long as the offender liveth.

This writ was much in use, during the time the Bishop of *Rome*'s authoritie was in credit in this land, and very necessary it was it should be so, for being that two like principall authorities acknowledged within this Land, the Spirituall in the Pope, and the Temporall in the King; the Spirituall grew on so fast on the Temporall, that it was to be feared (had not * these Statutes beene provided to restrain the Popes enterprises) the spirituall Jurisdiction had devoured up the temporall, as the temporall now on the contrary side hath almost swallowed up the spirituall. But since the foraine authoritie in spirituall matters is abolished, and

35. Ed. 2.

27. Ed. 3. c. 1.

38 Ed. 3. c. 1.

& 2.

7. Rich. 2. c. 12.

13. Rich. 2. c. 2.

2. H. 4. cap. 3.

* Nevertheless

these even out

of these Statutes, have our Professours of the Common Law wrought many dangers to the Jurisdiction Ecclesiasticall, threatening the punishment contained in the Statute Ann. 27. Edw. 3. & 38. ejusdem, almost to every thing that the Court Christian dealeth in, pretending all things dealt with in those Courts, to be the discretion of the Crowne (from the which, and none other fountain, all Ecclesiasticall Jurisdiction is now derived) whereas in truth Sir Thomas Smith saith very rightly and charitably, that the uniting of the Supremacie Ecclesiasticall and Temporall in the King utterly voided the use of all those Statutes: (*Nam cessante ratione, cessat lex*) and whatsoever is now wrought & threatened against the Jurisdiction Ecclesiasticall, is but in emulation of one Court to another, and by consequence a disignation of that authority, from which all Jurisdiction is now derived, and the maintenance whereof was by those Princes especially purposed.

Cowel in the Interpret.

either Jurisdiction is agnified to be settled wholly, and onely in the Prince of this land, sundry wise mens opinion is, there can be no *Plaintiffs* by those Statutes at this day, against any man exercising any subordinate Jurisdiction under the King, whether the same bee in the Kings name, or in his name who hath the same immediatly from the King: for that now all Jurisdiction, whether it be Temporall or Ecclesiasticall is the Kings, and such Ecclesiasticall Lawes as now are in force, are called the Kings Ecclesiasticall Lawes, and the Kings Ecclesiasticall Courts; for that the King cannot have in himselfe a contrarietie of Jurisdiction, fighting one against the other, as it was in the case betwene himselfe and the Pope, although hee may have diversie of Jurisdiction within himselfe, which for order sake, and for avoyding of confusion in government, hee may restraîne to cermaine severall kindes of causes, and inflict punishment upon those that shall goe beyond the bounds or limits that are prescribed them: but to take them as enemies, or underminers of his state, he cannot; for the question here is not, who is head of the cause, or Jurisdiction in controversie, but who is to hold plea thereof, or exercise the Jurisdiction under that head, the Ecclesiasticall or Temporall Judge. Neither is that to move any man, that the Statutes made in former times against such Provisors, which vexed the King and people of this land with such unjust suits, doe not only provide against such Proces as came from *Rome*, but against all others that came else where, being like conditioned as they; for that it was not the meaning of those Statutes, or any of them, thereby to taxe the Bishops Courts, or any Consistory within this land; for that none of them ever used such malepert sawcinesse against the King, as to call the Judgements of his Courts into question, although they went farre in straying upon those things and causes, which were held to be of the Kings temporall cognisance, as may appeare by the Kings Prohibition thereon framed. And beside the Archbishops, Bishops, and other Prelates of this Land, in the greatest heat of all this businesse, being then presente in the

Et lestat. est (in
Curia Romana
vel alibi) le
quel (alibi) est
à entendre en
la Court & Eu-
esque issint que
si hōme soit sue
la pur chose que
appert al Com-
men ley il aura
Pramunire.
Fitzherb. Nat.
Bre. Tir. Pre-
munire facias.

Parliament with the rest of the Nobility, disavowed the Popes insolencie toward the King in this behalfe; and assured him they would and ought to stand with his Majestie against the Pope, in these and all other cases touching his Crowne and Regalitie, as they were bound by their allegiance: so that they being not guilty of these enterprises against the King, but in as great a measure troubled in their owne jurisdiction by the Pope, as the King himselfe was in the right of his Crowne, as may appeare out of the course of the said Statutes; The word (*Elsewhere*) can in no right sense be understood of them, or in their Consistories: although some of late time thinking all is good service to the Realme, that is done for the advancement of the Common Law, and depressing of the Civile Law, have so interpreted it, but without ground or warrant of the Statutes themselves, who wholly make provision against forcaine authority, and speake no word of domestickall proceedings. But the same word (*Elsewhere*) is to be meant and conceived of the places of remove the Popes used in those dayes, being sometimes at *Rome* in *Italy*, sometimes at *Avignon* in *France*, sometimes in other places, as by the date of the Bulls, and other processs of that age may be scene; which severall removes of his, gave occasion to the Parliament of inserting the word (*Elsewhere*) in the body of those Statutes, that thereby the Statutes providing against Processse dated at *Rome*, they might not bee eluded by like Processse dated at *Avignon*, or any other place of the Popes aboade, and so the penaltie thereof towards the offender might become voyde, and be frustrated. Neither did the Lawes of this Land at any time whiles the Popes authoritie was in his greatest pride within this Realm, ever impute a *Pramunire* to any Spirituall Subject, dealing in any Temporall matter, by any ordinary power within the Land, but restrained them by *Prohibition* onely, as it is plaine by the Kings *Prohibition*, wherein are the greatest matters that ever the Clergie attempted by ordinary and domestickall authority, and yet are refused onely by *Prohibition*. But

when

when as certaine busie-headed fellowes were not content to presse upon the Kings Regall jurisdiction at home, but would seeke for meanes, for preferment, for forraign authority, to controule the Judgments given in the Kings Courts by processe from the Pope; then were *Pramunires* decreed, both to punish those audacious enterprises of those factious Subjects, and also to check the Popes insolencie, that hee should not venter hereafter to enterprise such designments against the King and his people. But now, since the feare thereof is past, by reason all entercourse is taken away betweene the Kings good Subjects, and the Court of *Rome*, it is not to bee thought the meaning of good and mercifull Princes of this Land is that the cause of these Statutes being taken away, the effect thereof should remain; and that good and dutifull Subjects stepping happily awry in the exercise of some part of their jurisdiction, (but yet without prejudice of the Prince, or his Regall power) shall bee punished with like rigour of Law, as those which were molesters, greivers, and disquieters of the whole estate. But yet notwithstanding the edge of those *Pramunires* which were then framed, remaine sharpe and unblunted still against Priests, Jesuites, and other like Runnagates, which being not content with their owne naturall Princes government, seeke to bring in againe, that and like forraigne authoritie, which those Statutes made provision against; but these things I leave to the reverend Judges of the Land, & others that are skilfull in that profession, onely wishing that some which have most insight into these matters, would adde some light unto them, that men might not stumble at them, and fall into the danger of them unawares: but, now to Prohibitions.

S E C T. 2.

The impeachment thereof by Prohibition and what it is.

A Prohibition is a commandement sent out of some of the Kings higher Courts of Records, where Pro-

hibition

hibitions have bene used to be granted in the Kings name, sealed with the seale of that Court, and subscribed with the Teste of the chiefe Judge, or Justice of the Court, from whence the said Prohibition doth come, at the suggestion of the Plaintife, pretending himselfe to be grieved by some Ecclesiasticall or marine Judge, in not admittance of some matter, or doing some other thing against his right, in his or their judicall proceedings, commanding the said Ecclesiasticall or marine Judge to proceed no further in that cause; and if they have sent out any censure Ecclesiasticall or Marine against the Plaintife, they recall it, and loose him from the same, under paine of the Kings high indignation, upon pretence that the same cause doth not belong to the Ecclesiasticall or Marine Judge, but is of the temporall cognisance, and doth appertaine to the Crowne and dignitie.

Of Prohibitions, some are Prohibitions of Law, some other are Prohibitions of Fact.

What are Prohibitions of Law,

Prohibitions of Law, are those which are set downe by any Law or Statute of this Land, whereby Ecclesiasticall Courts are interdicted to deale in the matters therein contained, such as are all those things which are expressed in the Kings Prohibition; as are also those which are mentioned by the second of *Edward* the sixth, where Judges Ecclesiasticall are forbid to hold plea of any matter contrary to the effect, intent, or meaning of the Statute of *W. 2. Capite 3.* The Statute of *Articuli Cleri, Circumspectè agatis, Sylva Cadua*, the treatise *De Regia Prohibitione*, the Statute *Anno 1. Edwardi 3. Capite 10.* or ought else wherein the Kings Court ought to have Jurisdiction.

What are Prohibitions of fact,

Prohibitions of fact, are such which have no precise word, or letter of Law, or Statute for them, as have the other, but are raised up by argument out of the wit of the Devisor. These, for the most part, are meere quirks and subtilties of law, and therefore ought to have no more favour in any wise, honourable, or well ordered Consistorie, than the equity of the cause it selfe doth deserve; for such manner of shifts (for the most part) breed nought else but matter of vexation,

vexation, and have no other commendable end in them, though they pretend the right of the Kings Court, as those other Prohibitions of the Law doe: but the Kings right is not to be supposed by imagination, but is to be made plaine by demonstration, and so both the Statute of the 18. of Edward the third, *capite 5.* is, where it is provided, that no Prohibition shall goe out, but where the King hath the cognisance, and of right ought to have; and also by the forenamed Statute of Edward the sixth, which forbids that any Prohibition shall be granted out, but upon sight of the libell, and other warie circumstances in the said Statute expressed: by which it is to be intended the meaning of the Law-givers was not, that every idle suggestion of every Attourney should breed a Prohibition, but such onely should be granted, as the Judge in his wisdome should thinke worthy of that favour, and if right and equitie did deserve it: although (as I must needs confesse) the Statute is defective in this behalfe, for to exact any such precise examination of him in these cases, as it is also in other points, and is almost the generall imperfection of all Statutes, that are made upon Ecclesiasticall causes: but I feare mee as emulation betwene the two Lawes, in the beginning brought in these multitudes of Prohibitions, either against or beside law, so the gaine they bring unto the Temporall Courts maintaineth them; which also makes the Judges they cesse not costs and damages in cases of consultation, (although the Statute precisely requires their assent and assignement therein) because they would not deterre other men from suing out of Prohibitions, and pursuing of the same.

The Prohibitions of the law, as have beene before shewed, are neither many, nor much repined at, because they containe a necessary distinction betwene Jurisdiction and Jurisdiction, and imply the Kings right, and Subjects benefit: but the Prohibitions of fact or of men, are both infinite and odious, for that there is, well nigh, no matter either Civile or Ecclesiasticall, be it never so cleere or absolute, but they clog and incumber it with some Prohibition; and

the

the matter they containe, is (for the most part) absurd and frivolous, as shall first appear in marine causes, and after in Ecclesiasticall matters.

SECT. 3.

Concerning the common Lawyers action of Trover, and what is meant in the Law by a Fiction, to shew, how the Civile Jurisdiction is impeached in matters of Admiraltie.

FOR Marine causes it is well knowne, that all such bargaines and contracts, or as it were contracts, as are made by any persons either in any forraine countrey, or any haven or creeke of the Sea, or any shore thereof, as farre as the greatest winter wave doth runne out, or upon any great river, to the first bridge next to the Sea, for any merchandize, ship, tackle, or other negotiation belonging to the Sea, or to any merchandize brought from beyond the Sea, is, and ought to be of the admirall cognisance, and so evermore hath beene since the Court of the Admiraltie was first erected: and yet the common Lawyers (to defeat the Civile Law of the triall thereof) have devised fundry actions, and among the rest, an action of Trover, whereby they saie, that a ship arrived in *Cheapside*, or some other like place within the Citie, and there the Plaintife and Defendant meeting together, bargained upon some merchandize, or other like sea-faring matter, by which fiction, they pretend the bargain now is to be tryed in the Common Law, and not by the Civile Law, as being done in the body of a Countie, and not upon the maine Sea, or any other place subject to the Admirall Jurisdiction.

But that this fiction, or any other like qualittied to this, should have any such force, as to worke any effect in Law, I will shew, first by the definition of a fiction, then by those things that are necessarily attendant thereon.

A fiction therefore is defined by *Barroli* (whom also the rest of the Doctors doe follow) to be an assumption of the Law upon

*L. si is qui pro
captore §. 3.
ff. de usucapi.*

upon an untruth, for a truth, in a certaine thing possible to be done, and yet not done: upon which fiction the Doctors hold, there waite two things, the one is Equitie, the other Possibility. For First, unlesse there be cause why, that which is not, should be fained to be, and that which is, should be accounted not to be, and that which is done in one sort, or at one time, or in one place, should be imagined to be done in an other sort, at an other time, and in an other place, there is no reason a fiction should be admitted: for the Law alloweth no man to come to extraordinary remedies, but where ordinarie remedies faile: and therefore if that which is in controversie may be obtained by any other meanes, than by a fiction, a fiction is not to be afforded: but if ordinary meanes cannot be had, then fictions may be entertained to supply the defect of the ordinary meanes, that thereby, although the truth be otherwise, yet the effect of the Law may be all one.

So then, the Law faineth an infant not yet borne, to bee borne for his benefit, for that happely without that fiction, the poore infant should be remediless of his Filiall Portion, Legacie, or other right in conscience due unto him: so Nephewes and Nieces succeed together with their Uncles and Aunts in their Grandfathers and Grandmothers goods, for such portion as should have come to their parents, if they had lived; for that the Law presumeth them to represent the person of their parents: so he that is dead, is fained to bee alive to many constructions in Law, specially if many of his equals in age be alive, at the time that he is fained to bee alive: so he that is alive, and is in captivity, (for the upholding of his Will which he made in liberty) is fained to bee dead the houre before hee became captive: so he that is obstinate, and wil not appeare in Judgement, being lawfully called thereto, is fained to bee present, that neither himself should take benefit out of his obstinacie, neither his adversary hurt by his absence and injurie. Infinite more examples might be brought of this sort, but it would be too long to run through them all, and this shall suffice to have

S

shewed,

onib. & ibi
Barrol.

*L. in causa. ff.
de minorib.*

*L. qui in utero
& penult. de
statu hominis ff.*

*L. 1. § si filius ff.
de suis et legis.
l. 2 l. 3. l. 4. G.*

cod. l. Gallus 29.

*§. & bene et §.
videndum ff. de
liberis et posthu-
mis. §. cum filius
Instit. de hered.
an ante nato.*

L. verus est. §.

ult. ff. pro socio.

*L. actione §.
publicatione ff.
cod.*

*L. absentem. ff.
de verborum
significat.*

L. lege Cornel.

*ff. de testamen-
to.*

*L. Gallus §. si e-
jus ff. de liberis
& posthumis. l.
§. pater §. si
cum. ff. de adopt.
Horat. de Arte
poëtica.*

*Bartol. l. si is
qui pro empto-
re num. 21. 22.
23. & sequen-
tib.*

shewed, that the Law approveth fictions, but where there is equitie for it, and the Law it selfe otherwise cannot have her effect. And as the Law cannot proceed to a fiction without equiry, so neither can it faine any thing that is impossible, for Art evermore followeth Nature; and therefore if a man would faine disproportionable things, such as the Painter did in *Horace*, who made Boares wallow in the waves of the Sea, and Dolphins wander in the woods; these fictions in no sence can be admitted, for that they are such, as neither Nature nor Reason can brooke. In like sort, if a man would faine one to live, who were dead two hundred yeares since, so that it were not possible that hee or any of his equals should live at that age, this would not hold in Law, for that it is above the age that the Law doth presume any man may live by Nature; although the Law doth presume such as dye in warre for defence of their countrey (for the better encouragement of those that are alive, to venture themselves in like service for the common wealth) to live for ever; because their fame doth flourish for ever: and upon like reason the Law will not suffer any person to adopt an other for his childe, who is either elder or equall in age unto himselfe, or is not so farre under his yeares, as by course of Nature hee might be his naturall childe indeed: so much the Law detesteth impossibilities, that it will not suffer a man to faine that which in common Sence and Nature might not be true indeed.

Now, if these things be true, as in all reason and shew, by former precedents they appeare to be true, I would gladly see how actions of Trover, (whereby the Common Lawyers translate unto themselves matters of Marine triall) if they be squared to these Rules of Fictions, can bee maintained: for first to speake of equitie, which the Law requires in these manner of proceedings, what equitie can it be to take away the triall of such businesse as belongeth to one Court, and to pull it to an other Court; specially, when as the Court from whence it is drawne, is more fit for it, both in respect of the fulnesse of knowledge that that Court hath

hath to deale in such businesse, and also of the competencie of skill, that is in the Judges & Professours of those Courts, correspondent to these causes, more than is in the Judges and Professours of the other Courts, for the deciding and determining of these matters. For, albeit otherwise they are very wise and sufficient men in the understanding of their owne profession, yet have they small skill or knowledge in matters pertaining to the Civile profession: for that there is nothing written in their Bookes of these matters, more than is to be gathered out of a few Statutes of former time, whose drift was not to open any doore unto them, to enter upon the admirall profession, but to preserve the Kings Jurisdiction from the Admirall incroachment, as may by the said Statutes appeare; whereas contrarily, the Civile Law hath sundry titles included in the body thereof, concerning these kindes of causes; whereupon the Interpreters of the Law have largely commented, and others have made severall Tractates thereof: So that, by all likelihood, these men are more fit and better furnished to deale in this businesse, than any men of any other profession, as having, besides the strength of their owne wit, other mens helps and labours to relie upon.

Besides, this businesse many times concerns not only our owne country-men, but also strangers, who are parties to the suit, who are borne, and doe live in countries ordered by the Civile Law, whereby they may bee presumed to have more skill and better liking of that Law, than they can bee thought to have of our Lawes, and our proceedings: and therefore it were no indifferencie to call them from the trial of that Law, which they, in some part know, and is the Law of their country (as it is almost to all Christendome besides) to the trial of a Law which they know in no part, and is meere forraine unto them; specially when the Princes of this Land have anciently allowed the Civile Law to be a Common Law, in these causes, as well to their owne subjects, as it is to strangers.

Further, the avocating away of causes in this sort from

one Jurisdiction to another, specially when the cause hath long depended in the Court from whence it is called, inso-much as now it is ready for sentence, or rather is past sentence, and stands at execution, cannot be but great injurie to the subject after so much labour lost, and money spent in waste, to begin his suit anew againe: which is like to *Sisyphus* punishment, who, when he hath with all his might, forced his stone up to the top of the hill, and so is (as himselfe hopes) at an end of his labour; yet the stone rowles downe again on him, and so his second labour (his strength being spent with the toyle of the first) is more grievous than the former was: which being seembably true in a poore Clyent, who hath his cause in hearing, there can be no equity in this fiction, whereby a cause so neere ended, should againe be put upon the Anvill, as though it were still rough worke and new to be begun.

- And surely, as there is no equity in it, so there is no possibility such a fiction should be maintained by Law; for that it hath no ground of reason to rest his feete on. For if this be granted, that such a fiction by Law may be made, then one of these absurdities must needes follow, either that a Shippe may arive in a place where no water is to carry it, or if that it arive according to the fiction, either the people, their houses and their wealth shall be all overwhelmed in the water, as the world was in *Noahs* Floud, & *Ducalions* Deluge, and so no body there shall be left alive to make any bargain or contract with the Mariners & Shipmen that arive there; or that the people that dwell there shall walk upon the water, as people doe on land, which *Peter* himselfe was not able to doe, but had suncke, if *Christ* had not reacht his hand unto him, and therefore far lesse possible for any other man to doe. So that it may bee well said (these things standing as they doe) no such fiction can hold, and that no action can be framed upon it; for as there is no Obligation of impossible things, so there is no Action of things that neither Nature nor Reason will afford to be done: neither is it to the purpose that the maintainers of these fictions doe say, that

that in this case, the place where the contract is made is not considerable, which I take to be farre otherwise; for that, when that themselves will convey a Marine cause from the Sea unto the Land, they will lay it to bee done in some speciall place of a Countrie, bee the place never so improper for such an action: for that the foundation of these actions, is the place where they were done, as namely that they were done in the body of such a Country, or such a Country, and not upon the maine Sea, or beneath the lowest bridge, that is upon any great river next the Sea. And therefore in two emulous Jurisdctions, when they are so divided, as that one is assigned the sea, the other the land, the place of the action can in no sort be suppressed, and another supplied in the roome thereof: *Quod enim una via prohibetur, alia via non est permittendum, & quod prohibitum est directo prohibetur etiam per obliquum*: for if this were granted, then matter enough would bee offered to one Jurisdiction to devour up the other, and the Law would be easily eluded: which, to restraine either of these Jurisdctions to their owne place, and to provide that one in his greatnesse doe not swell up against the other, hath set either of them their bounds and limits which they shall not passe: which, as it is the good provision of the Law, so ought either Jurisdiction in all obedience to submit it selfe thereunto, for that the diminishing of either of them is a wrong to the Prince from whom they are derived, who is. no lesse Lord of the Sea, than hee is King of the Land: and therefore, in no sort, such liberty must be allowed to the one directly or indirectly, as that it should be a spoile unto the other; which would easily come to passe, if when as the Law alloweth not any man to sue a Marine matter by the ordinary course of the Lawes of this Land, yet a man will follow it by an extraordinary. But where there is an uniformitie of Jurisdiction, as that it is all by sea and all by land, there may a thing be fained to bee done in one place, that was done in another place, without any mans prejudice, for that in this case the place is not traversable (so it bee not in Criminall matters where

where time and place is required, that the accuser doe not wander from place to place with the injurie of the accuser) for howsoever the place and the action is altered, yet the truth of the cause remaineth one and the selfe same still. And so farre as concerning actions of Trover in Admirall causes: Now it doth follow, that I should speake of like prejudices that grow to the same by actions of Trespasse, but those will I passe over, for that in so small a Treatise as this is, I cannot goe over all: and therefore will I onely put the Reader in minde, that there are more devises, rising out of the Common Law than one, that infect the Admiralty. But now to Wils and Testaments wherein they are impeached.

S E C T. 4.

Concerning Wils and Testaments, wherein they are impeached.

FOR matters of Wils and Legacies, they are so proper to the triall of the Ecclesiastical Law of this Realm, that the professors of the Common Law themselves, doe oftentimes confesse and say, they have no more to doe therewith, than the Civilian hath to do with the knowledge of the matters of Franktenement: and yet even these matters of Testaments and Legacies, although Prohibitions be not so frequent in them, as they are in the rest of Ecclesiasticall causes, yet they are not quite voide of them, & that in some points, wherein the very life and essence of a Will doth stand.

For whereas the ancient *Romans*, knowing how subject matters of Wils are to forgerie and corruption on the one side, and suppression and concealment on the other side, to meet with all craft and subtilty whatsoever, which might seize on them, did most carefully provide, that there should be seven witnesses, at the least, present at the making of every Will & Testament, except it were in time of some generall plague or sicknesse, when so many witnesses could not conveniently be had together, for fear of infection, or that it

was

were in the Countre, where there are small multitude of people. And that those witnesses should be particularly required to that purpose, with diverse other observations and circumstances tending all to the safe and sure making thereof; which the Ecclesiasticall Law altered afterward in sundry points, for that many true Wills were many times overthrowne for want of those precise solemnities. It therefore reduced the whole number of those seven witnesses, unto two onely, agreeably to the Law of God, and the Law of Nations, where that number of witnesses is allowed, as competent to prove any matter, so that the same witnesses be honest and credible persons, such whose faith is not doubted of. The Common Lawyers, because themselves in sundry matters very dangerously many times admit one witness, and give him full credit, and that in matters of great weight and importance, (as though all should be squared to their rule, and framed to their compass) if an Ecclesiasticall Judge in the probate of a Will, contrary to the rules of his owne Law, will not admit the testimony of one witness, they forthwith sing out a Prohibition against him, as though he had done an offence against the Crowne and dignitie, in that he doth not allow those number of witnesses in the Probate of a Will, that the Common Lawes of this land allow almost in every matter.

For answer to which, if I should allege the precise forme of the Ecclesiasticall Law, which to the essence of a Will requireth this number of two witnesses, or else holdeth it not for a Will (but in cases *inter vivos*, & *ad pios usus*, where the onely hand of the Father or Testator without witnesses serveth for a Will, so the same be knowne to be the Testators owne hand, or so proved by comparison) I would thinke to wise men I had said sufficiently; but I will not rest hereupon, but will convince themselves, by themselves: for, doe they, I pray you, in their own proceedings, where a Law or Statute requires more witnesses than one, content themselves with one witness alone; yea, doe they not in all cases where a certaine number of witnesses are appointed:

pointed to prove a fact by Law or Statute, furnish the cause with so many witnesses as the case desires, or else doe they not account the proceeding void? And will they thinke themselves so precisely bound to the keeping of the letter of the Common Law, and will they not suffer the Civilian in like manner, to cleave fast to the observation of the Civile Law, especially when it hath the consent of the Law of God, and the Law of Nations, and is his Majesties Ecclesiasticall Law of this Land, aswell as the other is his Temporall Law of the same?

I confesse it may be true many times, which one man saith, specially when there concurre therewith many great and violent presumptions, and the party that reporteth it is of good credit; but dangerous it is, to open this gap to the malice of men, for even so, many things shall bee obtruded to the Judge for trueth, which are starke lyes; and many things shall bee pretended to bee good in shew, which in prooffe and practise will be found to be no other thing, but meere drosse. And therefore well decreed the Emperour *Constantine*, that no one mans testimony should bee heard, though he were never so great a man in Court.

L. juris urandi.

S. Simili modo.

C. de Testibus.

But perhaps some man will say, If credit shall not be given oftentimes to one mans testimonie, much wickednesse will passe away unpunished: For reply to which I answer, It is better to let a bad man scape, than to punish a good; and although it be true, if a man may excuse himselfe by deniall, no man will be found guilty; so also it is true on the other side, if it be enough to condemnation to be charged by one man alone, without any other witnesses, no man shall bee innocent; and therefore the admittance of one witness in causes, and the proceeding thereupon to judgement is very dangerous.

An other like barre to this they lay against Ecclesiasticall proceedings in matters of Testament; whereas an Ecclesiasticall Judge proveth a Will, wherein are Mannors, Lands, Tenements, and other like Hereditaments bequeathed, challenging this also to be of the Crowne and dignity,

though the Ecclesiasticall Judge thereby took upon him to decree which lands were devisable by Will, & which not, or would by his probate adde a strength unto the Will, to make the devise good or bad, whereas on the contrary part, the Ecclesiasticall Judge by this act doth only testifie, that such a person made such a Will, & that the same was proved before him selfe under his Teste, for his last Will & Testament: but for the validity of the Will it selfe, & the Legacies and devises therein, whether they were of lands or tenements, or of goods or chattels, the Probate it selfe worketh nothing, but leaveth that to the Law, Common or Ecclesiasticall, according as the bequest belongeth to either of them; whether it be good & vailable in Law, or no: for it oftentimes falleth out, notwithstanding the Will be lawfully proved before the Ordinary, yet the bequests are not good, either in respect of the person to whom the bequests are made, or in respect of the thing that is not devisable in all, or in part; as by the Common Law, lands in *Capite* cannot be devised, more than for two parts, but in Socage the devise is good for all; and by the Custome of the Citie of London, & some other places of the Land, a man can bequeath no more than his deaths part, and if hee doe, his bequest is void for the rest; but in other places of the land a man may bequeath all. By the Civile Law a man can bequeath nothing to a Traytor, or an Heretick, or an unlawfull Colledge, or Company (unless perhaps it be for the aliment, or maintenance of them in extreame poverty, that they die not for hunger, which is the worke of charitie) and if hee doe, the legacie thereof is void to all intents & purposes. So then, the Probate of the Ordinarie in matters of land, neither helpeth, nor hindereth the right of the devise it selfe, but is a declaration onely of the dead mans doementtered before such & such witnesses: which taketh his strength not so much from the Probate, as from the Law, and is testified onely by the Probate, that the same was declared by the Testator, in the presence of the witnesses therein named, to be his true and last Will. So that no man herein is to be offended with the Ordinary, as presuming of a matter not appertaining unto him, (for his testification in all Law and conscience doth belong unto him, to give allowance so farre unto the defuncts Will, as it is avouched before him to be his last act & deed in that behalfe) but rather they are in this case to thanke the Ordinary, that he by that act of his hath preserved the memorie of that, which otherwise perhaps would

so have been lost and perished, to the great hurt of the Common wealth, and others which have private interest therein.

CHAP. II.

S E C T. I.

Of the Care that Princes of this Realm have had for the due payment of Tythes unto the Church, and the preserving of the cognisance thereof unto the Ecclesiasticall Courts of this Land, both before the Conquest and since.

* The great pietie & Princely care of our ancient Kings before the Conquest, is worthily noted by the Author, and because it argueth the rare devotion of those times, we will consider it more perfectly.



F all matters that appertaine to the Ecclesiasticall Courts, there is no one thing that the Princes of this Land have made more carefull provision for, since there was any Church government in this Land, than that all maner of Tythes due by the word of God should be fully and truly paid unto their Parish Churches where they grew; and if they were denied, should be recovered by the Law of the Church. * For first before the Conquest, King *Aethelstane* made a Law, that every man should pay his Tythes to the Church, & we will consider it more perfectly. About the seventh Centurie *King* of the West Saxons made this Law: *Cynric sceate ear syn a gæpene be seint martynnes mærran Gif hpa ꝥ ne ge læste. ꝥ he ꝥcylðig ꝥeoꝥeꝥig ꝥcill. ꝥ he ꝥpelpælcum a gæp ðone cynricæte*: that is, That the Church-sceat be paid in *Martlemas*, if any refuse to pay it, that his penaltie be foure shillings, and the payment of Church-sceats twelve times. That which the law here calleth Church-sceat, according to the variety of reading hath bin diversly interpreted. *Fleta*, as if it were *Cynricæte*, readeth Church-seed, and therefore he saith, it was *Certa mensura bladi Tritici*, &c. So the old Lawyer in *Lambert. suis un certain de blé basu quo chescun homme devoit en temps des Bretons* &c. *des Anglois porter a leur Eglise le jour Saint Martin*. Others read *Cynricæte*, Church-see; that is, the Church-store, or Church due. Which way soever we read the word, there will be no great injurie done to the sense: yet because other things besides Corne have gone under the name of Church-sceat (as the Cocks & Hennes at *Christmas*) therefore it seemeth that the last reading is the best: hence it must signifie a quantitie of Corne due to the Church, and to be paid in *Martlemas*. Why these dues and others were required at this Feast, *Hespinus* thinketh he hath given a good reason, but see *Greaser* in his *Booke de Festis* upon *S. Martini* day.

In the ninth Centurie King *Aethelstane* made this Law: *Te seþel æne cynric a gæpæhte* þæt eac he mænne hebbæd cooꝥe ꝥ æþra minna byscopa behte callum minnum geþeapum ðuþ ealle mænne rice on þe oþðræne

God, in manner as *Jacob* did, who made a vow to God. If God would bring him back againe to his Countrey, hee would

calja hal-
gona 7 þor
mine lura

þ hi æporc mine agener æthor ðam weofe geryllas ge ðær libben-
der ypper ge ðær gearliceſer peromeſ: that is, I *Aethelſtane* King, by the
advice of *Wulfelme* my Archbiſhop, and my other Biſhops, command all my Reves
thorough all my Kingdome in the Lords name, and of all Saints; and for my love
that in the firſt place they pay the Tythe of my owne revenues, as well in living Canell;
as the yearly fruites: 7 þær ſie to ðam weofe ðær beheaƿounges ðe in *John*
þær fulhweper: that is, And this to be done at the day of the beheading of *S. John*
the Baptiſt. And that the Subject might the more earnestly intend the obſervation of this
Law, the King addeth a pious exhortation: Vtan gepencan þe hƿæt *Jacob* þe huch-
æder to ðam drihten cƿæþ, Ic ðe wille geryllan mine weofan, 7 mine
ſiblae And drihten reolfe on ðam godſpel cƿæþ Callum ðam hæbbendum
mon ſceal aƿyran 7 hi genyhtumiaþ þe meoton eac ðær ðenem ðe e-
geſlic on ðyrum bocum 7 geprieten Giſ þe ure weodaſ geryllan nyllaþ
ur ða nýgon wealaſ biþ ætweðene 7 re weofa an ur biþ to laſ ðe god-
cunde lape ur gemýnaþ þ þe ða heoponlica ðinga mid ðam coſplicum 7
ða ecelic mid ðam hƿilpenolicum gecapmiaþ: that is, Furthermore, thinke wee
with ouſ Our ſelves what *Jacob* the High Father to the Lord ſaid: I will give thee my Tythe
and my peace-offering. And the Lord himſelfe in the Goſpel ſaith, To all that have, it ſhall be
giſen, and they ſhall abound. We might alſo bethinke Our ſelves of the penaltie which is
written in this booke, that if wee will not pay our Tythes, then the nine parts ſhall be taken
away, and the tenth only ſhall be left us. And Gods Lore puteth us in minde, that for theſe
ſanctly thinga eternall are to be had, and everlaſting for the tranſitorie.

Thus the religious Prince goes on, and earnestly purſues the argument in the Rhetorick of
thoſe times, ſeeming to intimate to his people, that though no humane Law had interpoſed it
ſelfe, yet the divine equitie of this cauſe, might be eminently enforced out of ſacred Writ-
ing. King *Edmund* in a Synod holden at *London*, at which was preſent *Oda* 7 *Wulfſtan*
ſceabiſceop 7 manige oþre Biſceopas, *Oda* and *Wulfſtan* Archbiſhops, and
my other Biſhops, made this Law for holy Church: weofungas þe beþeoƿaſ æl-
cum cƿiſtenum men be hiſ cƿiſtendome 7 cýncƿeaƿe 7 ælmeſſeoð:
Giſ hi ƿ hƿa ðon nýlle ſý he amannumod: that is, Wee command all Chriſtian
men by their Chriſtianitie to pay Tythes, Church-ſceat, and Almeſſee, if any reſuſe to doe ſo
in him be accuſed.

Concerning the ælmeſſeoð mentioned in the Law, it was that Almeſſ-money which
was called the Peterpence, for when *In* the *West Saxon* King went in pilgrimage to *Rome*,
he made it a Law to his Subjects, that every houſe ſhould pay a yearly pennie to the Pope, &
this was to be tendred at *S. Peters* tyde, as appeareth by *Edgars* Law num. 4. And ſý æl
heopþ pening a ƿypen be *Peter* maſſe we ge. See alſo the Lawes of *Canos*
and *Edward* the Confeſſour.

And whereas we finde the Curſe of Excommunication here annexed by the Law to this Com-

crilledge of when hee returned home, pay Tythes to God, of all that God should give him : the like did King *Edgar*, and King *Edmund*, commanding

Tenth, it is not without a parallel: for amongst those solemne Execrations which by a Court-cell held here at *Oxford*, were to be openly pronounced foure severall times in every yeare, wee finde these Church-robbers twice branded with *Anathema*. In the first Article thus: All they ben accursed the rightes of holy *Chyrche*, as in *London* tenets, rent, possessions, mayntees, leasours, pastours wayes pathes, wetingly, and unquistly, or malypously befallen and with-holden counceilen buyden or to with-hold or to avoyde procure. In the 26. Article in this manner Also all they ben accursed more & lesse whiche wyttlingly, wyttfully, or malypously, and unquistly, for any man hath had vitally the *Sacramentis* of God, that is to say, their *Persones*, *Vicars*, *Chapelyns*, *Parochypals* whatsoever condeypon that they ben or faune the thythes, presentys, pfectys, oblations of custome and consuetude used lasse or more with-holden or done to bee with-holden, or the sayed thythes of oblations chaungen or turnen in to other use than it was requyred in holy *Chyrche* lawe. But of this, see more *Cap. 3. Sect. 2.*

In the Lawes of King *Edgar*, it was decreed in the first place, þæt goder cynican syn rihtes pyppe 7 man a gype ylce ælc teopunge to ðam ealðan mýnstræ ðe seo hyrnesse to hyrþ: That Gods Church should have all her rights, and that every man should pay his Tythes to the elder Minister (or Mother-Church) where hee heareth the Word. *cap. 2. of Edgar's Lawes: See also the 3. & 4. Chapters.*

In the Lawes of King *Cnut* *cap. 8.* thus it is, 7 gelaet man goder gereht æghwice geare rihtlice teopne þæt is rihtælmeære firtene niht oðer eartran 7 geðoðe teopunge be Pentecosten 7 eorþ færtoma be ealra halgena mærran 7 gif hwa þonne þa teopunge gelaetan nælle swa geðeopan habbaþ þæt is se teopa æcen eal swa se riht hwa geðap þonne fære to þæs cyninger gerehta 7 þæs bircopar 7 þæs land rican 7 þæs mýnstræ mæsse preost 7 niman unþances þonne teopan ðæl þam mýnstræ þe hit to gebirge 7 teacan him to þam nioðum ðæle; 7 to ðæle man þa ealra oðlar on swa 7 fō se landhlaford to healfum 7 to healfum to bircop 7 to cyninges man 7 hit ðegner: That a man must bee careful right to pay Gods rights every yeare, to wit, the Plough-almes 15. nights after *Easter*, and the Tythe of young Cattell by *Whitsontide*, and the fruits of the Earth by *Almsgiving*. And if there bee any that will not pay his Tenth, so as wee have said, that is, the tenth Acre according to the going of his plough, then the Kings Réve and the Bishops, and his that owes the land, together with the Masse-priest of the Minister may goe and take away the tenth part whether he will or no; and give it to the Minister whereunto it belongeth. The ninth part hee may take to himselfe: As for the right parts let them be divided in two, and let halfe goe to the Land-lord, and halfe to the Bishop, whether it bee one of the Kings men, or a Thane.

Concerning the Plough-almes, for which the Saxon saith *rihtælmeære*, *Lambard* saith thus: *Ego me legisse memini in vetustissimo quodam legum Ethelredi Regis libello, imperium* twice imposed in single aratra denarium unum, &c.

that those which wilfully refused to pay their Tythes, should be excommunicated.

William the Conquerour (as Roger Hoveden reporteth) in the 4. yeare after his conquest, having gotten some time of rest from war, and feeling of rebellious spirits, who kicked at his government at home, entred into a consideration of the well ordering of the Church & Common wealth, by wholsome Lawes: and therefore by the advice of his Councell, he summoned all the great Prelates & Potentates of this Land with twelve other sufficient men of every Shire, experienced in the Lawes and customes of the Land, that he might by them learne, by what Lawes and customes the Land was governed, before himself came to the Crown thereof: straitly charging & commanding them uppon his high displeasure, they should make true report to him thereof, without adding any thing thereto, or taking any thing therefro: who beginning with the Lawes of holy Church, began by it, the King and his Throne are established, among other Lawes and liberties of the Church, recorded this for one, which I will verbatim set downe in Latin as it is penned by the Authour.

Hoveden
part. 2. cap.
De Decimis Eccle-
siae.

To which
the
Book
of
Basil
Bishop
of
Constantinople
wrote
the
same
year.

*Decimus Annona decima garba est Deo reddita, & ita reddenda: See for this
qui regem Equarum habuerit, pulum reddat decimum; qui annam
the lawes
of Edward
the Confes-
sors, num.
8. & 9. by
whom this
decree was
first made,
and after-
wards rati-
fied by the
Conque-
rour.*
*annam vel annas habuerit, de singulis pulis singulos denarios prebeat.
8. & 9. by
whom this
decree was
first made,
and after-
wards rati-
fied by the
Conque-
rour.*
*Similiter, qui plures Vaccae habuerit, decimum vitulum, qui annam vel
annas habuerit, de singulis vitulis singulos denarios; & qui callem fecerit, de
callem decimo die. Similiter, qui annam
annam Deo, est non fecerit, in decima die. Similiter, qui annam
annam, Tollis decimum, Butyrum decimum, Porcellam decimum. De
annam vero similiter, decimum commodi, quatuordecim de bosco, de prado,
annam, de molendinis, parvis vivariis, piscariis, virgulis, & hortis, &
annam, & omnibus rebus quas dederit Dominus, decima pars
annam est, qui novem partes similes cum decima laetatur. Et qui
annam decimavit, per justitiam Episcopi, & Regis (si necesse fuerit) ad so-
annam arguatur. Hoc enim S. Augustinus predicavit, & apertis, &
annam testis sunt a Rege, Baronibus, & populo: Sed postea in fine Di-
annam cunctis cum desinperant, & Sacerdotes negligentes non curabant in-
annam quere ad perquirendas eas, ea quod sufficienter habebant vite sua
annam. Multis enim locis modo sunt tres vel quatuor Ecclesie, ubi
annam temporis una tantum sunt, & sic caperunt minus.*

This Augustinus, to whom the Conquerour here referreth him-
selfe,

Ethelward.
lib. unico.

Tocelm of
Furnes in
his Booke
of Britiſh
Biſhops.

Marianus
Scotus.

Edward
1. lib. 1. cap. 14.

An. 18. Ed.
3. cap. 14.

An. 1. Rich.
2. cap. 14.

ſelfe, was *Auguſtine* the Monke, whom *Gregorie* the great about the yeare of our Lord God 569. ſent heere into *England*, to reſta-
bliſh the Faith decayed by the *Saxons*; who ſet downe ſundry or-
nances for the Church, & framed it in uniformity of Prayer and go-
vernment to that, which then was uſed in the Church of *Rome*; long
before *Aug.* time, as it may by our Stories appeare, (even in the
dayes of King *Lucius*, who ſent to *Elutherius* a Biſhop of *Rome*, ſe-
learned men to inſtruct him and his people in the Faith, which was
about a hundred and forty yeares after the Aſcention of our Lord Je-
ſus Chriſt) the Faith of Chriſt was here preached in *Britaine*, and
fifteene Archbiſhops are by our Stories reported, one to have ſuc-
ceeded another in the See of *London*, before the irruption of the
Saxons into this Land: All which time it is not like the Churches
God that were in the Land, were void of this proviſion for the mi-
niſterio, ſo that I aſſure my ſelfe the payment of Tythes was
more ancient than the time of *Auguſtine*; albeit the *Conquerour* ſet-
teth there the authoritie of *Auſtin*, rather than any former pre-
ſident of the *Britons*, both for that the doctrine of *Auſtin* was
knowne unto the *Saxons*, among whole Anceſtours *Auſtin* taught
governed as an Archbiſhop, than any of the Fathers of the *Engliſh*
Church, to whom the *Saxons* were enemies, and their tongue to-
gether unknowne unto them; and beſide, for that this doctrine of
Auſtin, concerning Tythes, beſt ſuited with the generall queſtion
that was then uſed throughout all Europe in paying thereof.
The next Prince after *William* the *Conquerour* that ordered any
thing about payment of Tythes, for ought that I have read to the
contrary was *Ed. 1.* who at the petition of the Clergie, eſtabliſhed
the Articles of the Clergie, which his Sonne *Edm. 3.* confirmed by
his Letters Patents under his great Seale, & by conſent of the
Parliament at the petition of the Clergie in the 12. yeare of his Reigne.
In *Edward* the third time, Writs of *Scire facias* were granted
out of the Chancerie, to warne Prelates and other Clerks to an-
ſwer for Diſmes there; but after the matter was well underſtood
the King, the parties were diſmiſſed from the Secular Judges, in
ſuch manner of plea, ſaving to the King his right, and ſuch as his
Anceſtours had, and were wont to have of Reaſon.

During the Reigne of *Richard* the ſecond, Parſons of holy Churches
were drawne into ſecular Courts for their owne Tythes;

some of goods taken away; And it was decreed by the King, that in such case the generall averment of the plaintife should not be taken, without shewing specially how the same was his Lay-cattell.

By the Statute of the first of the same King *cap. 14.* it is acknowledged, that the pursuing for Tythes of right doth, and of old times, was wont to pertaine to the Spirituall Court, and that the Judges of *35. Ed. 3.* holy Church onely have the cognifance in these matters.

By the Statute of the 15. of *Edw.* the third, it is ordered, That Ministers of holy Church, neither for money taken for the redemption of corporall penance, nor for proffe and account of Testaments, nor for travell taken about the same, nor for solemnitie of Marriage, nor for any other thing touching the Jurisdiction of holy Church should be appeached, or arrested, or driven to answer the Kings Justices, or other Ministers, and thereupon they should have writs in *2. Henr. 4.* the Chancerie, to the Justices when they demanded them.

In the second yeare of *Henry* the fourth, the Religious of the order of the *Cisterciens*, that had purchased Bulls from the Pope to be discharged of the payment of Tythes, were by act of Parliament released to that state that they were in before. *5. H. 4. c. 11.*

In the 5. yeare of the same King it was ordered, That all Farmers, and Occupiers of any lands or possessions belonging to any Fryers, Aliens, should pay all manner of Tythes due to Parsons and Vicars of holy Church, in whose Parishes the same were, as the Law of holy Church required, notwithstanding the same were seised into the Kings hand, or any Prohibition were made, or to be made to the contrary.

About the 7. yeare of the same King, such religious persons as had purchased Bulls from the Pope in the dayes of *Richard* the second, to bee discharged of Dismes pertaining to Parish Churches, Prebends, Hospitals, or Vicarages, not put in execution, were forbid from that time forward, to put them in execution, or to purchase any other in time to come.

After King *Henry* the eighth had dissolved the Monasteries, and other like religious houses, and sold the Churches and Tythes thereunto belonging to Lay men, (who before that time were not capable of the same; inasmuch as after the dissolution, when the Purchasers demanded the same, they were denied to hold plea thereof, by reason *27. Hen. 8. cap. 20.* of their incapacitie,) a Statute was made in the 27. yeare of the same King,

King, whereby all Subjects of the Kings Dominions, were to pay their Tythes, and other duties of holy Church, according to the Ecclesiasticall Lawes and ordinances of the Church of England, and after the laudable uses and customes of the Parishes & places where they dwelt, or occupied lands, and the same to be sued for before the Ordinarie, or some other competent Judge of the place, according to the course and proceffe of the Kings Ecclesiasticall Courts of England: which Statute because it tooke little effect, by reason of the obitinacie of the people in not yeelding these duties to the Laitie, who had purchased them, and that the said Purchasers could neither by the order or course of the Ecclesiasticall Lawes, sue for them in any Ecclesiasticall Court of this Land, neither was there found any remedy in the Common Law of this Land, whereby they might be releevd against them that wrongfully detained the same. Therefore in the 32. following an other Statute was made, wherein it was enacted, that all & singular persons of this Realme, and other of the Kings Dominions, of what state, degree, or condition soever they were, should fully, truly, and effectually divide, set out, yeeld, and pay all and singular their Tythes and Offerings to the owners, proprietaries and possessors of Parsonages, Vicarages, and other Ecclesiasticall places according to the lawfull customes and usages of the Parish and places, where such Tythes or other duties rise and grow due. And in case where any are wronged and greeved, being either an Ecclesiasticall or Lay person, for the wrongfull detaining or with-holding of the said Tythes or Offerings, or any part or parts thereof, the same to have full power and authoritie to convent the same person or persons so detaining the same, before the Ordinarie or other competent Judge of the place, where such wrong was done: and the same Ordinarie or competent Judge to have power, by vertue of the said Act, to heare, decide, and determine the same by definitive sentence, according to the course & proceeding of the Ecclesiasticall Law, without reservation of any right to the Temporall Judge to give remedie by any suit or action for the recovery of the same; saving in case where an inheritance or freehold in the premises is claimed, and the person claiming is dispossessed, deforced, and put from the possession of the same, in which cases onely, the Statute alloweth the Temporall Judge to take knowledge, and that onely for the regaining of the right and the possession of the inheritance so lost.

After

After the decease of King *Henry*, King *Edward* his Sonne tending in like sort the state of the Clergie, the benefit of his subjects, and the practice of the Ecclesiasticall Courts of this Land, made a Statute, whereby he did not only ratifie, confirme, and allow such Statutes as his Father had formerly made, but did further order, that every of the Kings subjects from thenceforth should justly and truly without fraud or deceit, set out and pay all manner of prediall tythes in their proper kinde, as they did rise and happen, in such manner as had beene paid within the fortie yeares next before the making of that act, or of right or custome ought to have beene paid, with certaine forfeitures and penalties, as well against them which carried away any prediall Tythes, before the tenth part thereof were justly divided from the same, or otherwise agreed for with the owner thereof; as also against those that did let or hinder the owner thereof, his deposite or servant, to view, take, or carrie away the same. Enacting further, that the partie so subtracting or withdrawing any of the Tythes, obventions, profits, commodities, or other duties aforesaid, might or should be convented or sued in the Kings Ecclesiasticall Court, by the party complainant, to the intent the Kings Ecclesiasticall Judge might then and there determine the same, according to the Kings Ecclesiasticall Lawes. And that it should not be lawfull for the Parson, Vicar, or any other owner or farmer thereof, contrary to the same act, to convent, or sue any withholder of Tythes, or any other like duties, before any other Judge then Ecclesiasticall, excepting onely out of the said Statute things contrary or repugnant to, or against the effect and meaning of the Statute of *Westminster* the second, the fifth Chapter, the Statutes of *Arsienli Cleri*, *Circumspetti agatis*, *Sylva Cadua*, the treaties *De Regia Prohibitione*, matters against the Statute of *Anno primo Edwardi primi*, *Capite decimo*, and such other matters beside, wherein the Kings Court of right ought to have Jurisdiction.

D E C T. 2.

That the Statutes of the xxvii. and xxxii. of Henr. the 8. and the 2. of Edward the vi. cap. 13. intended for the true payment of Tythe, and the preservation of the triall thereof unto the Ecclesiasticall Courts, are now turned to the hindrance of them both.

Notwithstanding all which good provision of ancient Kings before the Conquest, and moderne Kings since the Conquest, for the assuring of the suit of Tythes to the Ecclesiasticall Courts onely, and the continuall possession that the Ecclesiasticall Courts have had of the same, deduced from so ancient times, as hath beene before shewed, and so often obtained in contradictorie judgement, as the consultations thereupon granted doe testifie: yet sundry men of this Land, in sundry ages, have by wretches and subtil devices (which are odious in Law, and are by all godly and wise Judges by all possible meanes evermore to be restrained) raised up matter out of the said Statutes themselves, contrary to the true sence and meaning thereof, to draw the triall of most of those matters away from the Ecclesiasticall Courts. So that those Statutes which then were intended for the good of the Ecclesiasticall Courts, are now become the utter ruine and overthrow of the same, contrary to the rule of the Law, and common reason; that things which were purposed for one end, should worke unto an other.

The first advantage they take against the Ecclesiasticall Courts out of these Statutes, is gathered out of the twenty seventh, and thirty second of Henry 8. where it is ordered, that all the Kings Subjects shall pay their Tythes, according to the laudable uses and customes of their Parishes, and places where such Tythes grow & become due: which albeit is undoubtedly meant of Ecclesiasticall customes, useable at the Ecclesiasticall Law, and so ever hold till now of late, that men thinke all too much that goeth beside their owne net; yet there want not in these dayes, which goe a-

bout

*L. legati instituti.
litter. ff. de adi-
mendis legatis,
l. 2. ante finem.
C. de iureiur.
propter calum-
niam dando.*

27. & 32. H. 8.

bout with all might and maine to draw away these things
 into the Temporall Courts, as belonging to the Temporall
 Crowne and dignitie: Wherein they doe wrong, not onely
 to the Kings Ecclesiasticall Courts, to spoile them of their
 ancient jurisdiction, but also doe injurie to the King him-
 selfe, as though he had but one proper Jurisdiction belong-
 ing to his Throne, and seat of Majestie, and that which
 were done by his Ecclesiasticall power, were done against
 his Crowne and Dignitie; whereas they are equally united
 in him, and his Throne is no lesse stayed up by his Ecclesi-
 asticall power, than it is upholden by his Temporall autho-
 ritie. And therefore a meere Paradoxe is that, that they so
 constantly affirme, That customes in payment of Tythes are
 matters of Temporall cognisance onely, and not of Spiritu-
 all cognition. For, as there be secular customes, such as
 are the customes of Mannors and Lordships, where the Lord
 hath his Rent, his heriot, his reliefe and service; and the
 tenant againe doth his homage and fealtie, according to the
 nature of his Tenure, which secular customes, the forena-
 med Statute *De Regis Prohibitionibus*, forbiddeth Ecclesiasti-
 call Judges to deale in: So also there are Ecclesiasticall cu-
 stomes, such as is the payment of Tythes, and other Eccle-
 siasticall duties, to which common Lawyers are not to put
 their hands, but to abstaine from them, as dedicated to the
 use and triall of the spirituall Courts. Otherwise would
 neither the ancient Authors of the Legatines, and Provinci-
 all constitutions of this Land (the eldest of which, are e-
 quall with the dayes of *Henry* the third, and the youngest of
 them endeth in the reigne of *Henry* the fifth) ever have
 changed so many severall customes of payment of Tythes,
 as then were within the Land, and in stead of them, have
 brought in one uniforme payment of the same, as is at this
 day used, save where either the negligence of the Parsons,
 or the covetousnesse of the Parishioners hath in some point
 changed the same. Neither would these Statutes of *Henry*
 the eighth ever have ordered the people should pay their
 Tythes after the laudable customes and usages of the Pa-
 rishes

*Provincial. c.
 quoniam de do-
 cibus.*

*L. Finali. ff. de
officio ejus cui
mandata est in-
visd. l. 3. ff.
de penul legat.*

rishes where they grew, if the usage and custome of the payment it selfe had not beene subject to the Ecclesiasticall cognizance: for in vaine shall a man sue for that, the Law allows him no course to come by, if it be denyed in the speciallest point belonging to that suite: for this is undoubted Law: where ever there is an authority or jurisdiction granted, there are in like manner granted all those things, without which that authority or Jurisdiction cannot bee perfected, or performed.

SECT. 3.

That customes of payment of tythes are triable onely at the Ecclesiasticall courts.

AND therefore it is without question, as Tythes, by the said Statutes, are onely recoverable by the Ecclesiasticall Law, and not elsewhere; so also the custome whereby they are paid, is only triable at the Ecclesiasticall Law. Otherwise this inconvenience will follow thereupon, which in all other Lawes, beside this of ours, is a great absurditie; that the connexitie of the cause, which the Civilians call *Continuitatem causarum*, will be dismembred and disjoyned, which by all good pollicie, together with all her parts emergent or annexed, ought to be handled, discussed, and determined before one and the selfe same Judge; one, I meane not in number, but one in profession, for otherwise I should, by this assertion, barre Appeales, which is not mine intent.

*Bartol. l. nulli. C.
de iudicijs. Glos.
s. significave-
runt de iudicijs.*

Which course, if it were held here in *England*, causes should not be drawn peece-meale in such sort as *Medea* tore her brother limme-meale, and one part of it carried to this Court, another to that, like unto the rent lims of the childe that were cast here and there by *Medea*, thereby to hinder her father from pursuing her; but all should be ended in one and the selfe same Court, which would be a great ease to the subject, who now to his intolerable vexation, and excessive charges is compelled to runne from Court to Court, and to gather

*Cicero pro Mu-
vena.*

gather up as it were, one lim of his cause here, and another there, and yet happily in the end cannot make a whole and perfect body of it.

Beside, it is a mighty disorder in a Common-wealth, thus to jumble one Jurisdiction with another, & the very confusion as well of the one Law as the other; for as Kingdomes are preserved by knowing their bounds, and keeping their limits, so also Jurisdictions are maintained and upheld by containing themselves within the lists or banks of their authority.

Further, unless they will grant that there is an Ecclesiasticall custome, as there is a Secular Custome, and that the one is as well to be tried in the one Court, as the other is in the other, they will make their own Doctrine in the before-rehearsed Prohibition voyde, where they will have it certain, that there is a Secular Custome; & if there be a Secular Custome, then doubtlesse there is also an Ecclesiasticall or Spirituall custome: for the word Secular, is not put in that place absolutely, but relatively; and the nature of Relatives, is one to put another, and one to remove another: but in the Secular customes they barre the Civilian, therefore they grant him the spirituall, for of contrary things there are contrary reasons, and contrary effects: and what that which is proposed, doth worke in that which is propounded, the same againe that which is opposed doth worke in that which is opposed, by which Rule, as Temporall Lawyers are to deale in Temporall Customes, and spirituall men are not to intermeddle therein, so also Ecclesiasticall Lawyers are to deale in Ecclesiasticall causes, and Temporall Lawyers are not to busie themselves thereabout.

And that this was the intent of the King, when hee first received the Church into his protection, with all the privileges thereof; may appeare hereby, that having united both the Jurisdictions in his owne person, he did not jumble them both together, as now they are, but kept them distinct, one from the other; not onely in authorising the Eccle-

*Glossa Clem.
nica in verbo a-
ternaliter de
summa trinit.
& fide catholi-
ca.*

*L. Fin. §. plus
autem de lega-
tis 3. & de
Angel.*

sasticall Courts that were before, but also in using the very words and phrases that the Jurisdictionaries Ecclesiasticall did use every where in their writings, even these words whereupon men now take hold to frame Prohibitions, viz. (according to the laudable customes and usages of the parish and places where such Tythes grow) which were the words of *Innocent* the third, in the Decretals upon the title of Tythe, long before these Statutes were made; or any other Statutes concerning the true payment of Tythes; and *Lincolne* in the same title of Tythes often useth the very selfe same words and phrases that the other doth: so that if these words made no Prohibition before the Statute (as I thinke, it cannot well be shewed to the contrary) neither ought they to doe it now since the Statute; for that they are spoken still in the Church businesse, and not in a temporall matter: whose government, although it be under one and the selfe same Prince, that the temporall state is, yet is it distinct from the same, as ever it hath beene since there hath beene any settled forme of Church-government in any common wealth, as may appeare both by the example of *Paul*, which never goeth to any temporall power to punish the incestuous person, although there were sundry lawes then both in Greeke and Latin written of these matters, but doth it by the spirituall sword alone: and also by that, that in matters of jarre for worldly causes betweene brother and brother, hee forbids such as were new Christians, to goe to law before Infidels, but adviseth them rather to appoint Judges among themselves to decide such controversies: which albeit in those dayes was meant as well of lay Christians, as of the Ministers of the Gospell, for that the number of them then was small, and the causes of suit they had one against an other were not many, and might easily be ended by one and the selfe same consistorie; yet when the number of the Christians increased, and the Church got some rest from persecution, the Jurisdiction was againe divided; and as there were secular Courts appointed by Princes, where in temporall mens causes and lay busineses were heard,

1 Cor. 5.

1 Cor. 6.

heard; so there were also by the same authoritie erected Ecclesiasticall Courts and Bishops audiences, wherein either Ecclesiasticall mens causes alone, or such as they had against Lay men, or Lay men against them were treated of, and determined.

*C. de Episcopali
audientia ter-
tia.*

So that this was no new devise of *Henry* the eighth, or *Edward* his Sonne, that when they tooke upon them the supremacy over the Church, as they had before over the common-wealth, they did not mismanage both the States together, and made one confused heape of them both, but left them severd as they found them, onely affording either of them an equall proportion of protection; for that by these two parts, the Kings Monarchie is compleat, and himselfe is the head and chiefe Governour of the whole and entire body of his Realme. For this was exemplaried unto them in all former ages, since the Church and common-wealth had any loving and kind cohabitation together, as hath bene before remembred. And therefore doe they wrong to the ashes of those Kings deceased, which by subtil fence and strained interpretations, draw these Lawes which they intended for the benefit of the Church, and Church-government, to the overthrow of the same, as though the Positive Lawes of the Kingdome, could not stand, if the Lawes of the Church continued and stood upright.

SECT. 4.

That the limits and bounds of Parishes are of the Ecclesiasticall cognisance onely.

Vpon the same words of the same Statute, (if perhaps at any time there grow any controversie about the limits or bounds of Parishes) they draw the same by like importunitie from the triall of the Ecclesiasticall Law, unto the Common Law, avouching the same also to be of the Temporall cognisance; and yet *Linwood*, who lived in the dayes of *Henry* the fifth, making a Catalogue of the principall matters that in his dayes belonged unto the Ecclesiasticall

Ricall Courts, reckoneth the bounds of Parishes for one. And verylike it is that it should so be, for that Ecclesiasticall men first in this Kingdome, made divisions of Parishes, as by our owne Chronicles it appeareth; and the first practice thereof within this Realme, came from *Honorius* the fourth Archbishop of *Canterbury* after *Augustine*, who himselfe died in the year of our Lord God 693.* although otherwise the thing it selfe be more ancient, and descends from the counsell of Saint *Paul*, which he gave to *Titus*, to appoint Elders in every Citie: But that Cities and Countries again are divided into severall Parishes, it was the ordinance of Pope *Dionysius*, about the yeare 266. and from him derived into this and other Realmes; and the distinction thereof was chiefly devised, that it might be knowne of what congregation every people were, and that so they might be trained up in the Schoole of godlinesse under their owne Pastor or Minister. But that now the division of Parishes doth serve to other politrick uses, it comes not of the first

*Registro Eccl.
Xpi. Cant. Stew.*

Tit. cap. 1. v. 5.

* He that shall trace the Writers for that which concerns the ori-

ginall of Parishes, may finde some probable issue, if the course of Antiquitie runne cleere. Those that first gave example to others in this matter, are conceived to bee the ancient Roman Bishops; for it was recorded in the *Pontifical* of *Damianus* (as some would have it) But in *Anastasius Bibliothecar.* wee finde it, that wyhen *Peter* had appointed & ordained Priests &c. and *Cleus* had reduced them to a certaine number, Pope *Enarist* assigned to each of them his Parish, or as they then said, his Title: For so a Title is understood by *Onuphrius*, and so in effect it may be taken, though otherwise *Paracia* is *Accolatus ad sacram Eodem, Titulus autem Edes ipsi.* And it may seeme, that *Titulus* might bee taken for *Paracia*, because this hath beene taken for that: For in the Councils wee shall sometimes finde a Parish put for a Parish Church, which is the meaning of *Titulus*. See *Baronius ad annum Christi*, 112. where the learned Cardinall setteth downe at large what these Titles were, and why they were so called. As for the time when these Parishes were assigned by *Enarist*, it must be about the beginning of the 2. Centurie.

This done, and the number of new Converts increasing, *Higinus* placed severall Priests in singular Parishes, and the chiefe of those he called *Cardinales Presbyteros*: and heere we must beleeve, that the Romish Cardinals began, if at least wee will bee guided by their Historians. In after-times Pope *Denis* improoved these conveniences invented by his Ancestours, and set limits to Parishes. And this was done about the yeare 260. If these things bee answerable, as they are generally received by the Romish Antiquaries, then it may seeme that other Nations made the like provision sooner or later, according to their example. And this is the rather to be beleaved, because this Pope *Dionysius* wrote an Epistle to *Seyverus* Bishop of *Corduba*, to observe this order in his Diocesse, and looke

instru-

institution thereof, which was meere Ecclesiasticall : but it groweth out of a second cause, that is, because being so fitly and aptly primarily divided by Ecclesiasticall men as they are ; the Princes therefore did use the opportunity thereof for temporall services, subdividing the same againe into many Tythings or like smaller divisions, for the more speedy service of the King, and better ordering of the commonwealth. Which our ancient Fathers well knowing, never called the same in question, acknowledging therein the good they had received from Ecclesiasticall men, by this partition of Countries into Parishes : but men of later age being lesse thankfull than they, and loath to seeme beholding to Ecclesiasticall Courts for any matter of good order and disposition, have arrogated the same wholly to the Temporall Courts ; as though the Ecclesiasticall Judge could not as well discern what two or three honest men depose and say

what course himselfe tooke, that hee should direct other Bishops to doe in like manner. What was elsewhere done doth not so neerely concerne, but here at home the first division of Parishes is ascribed to *Honorius* Archbishop of *Canterbury*, as the Author here hath cited out of the Register,

and it is approved by *Camden*. *Sed cavendum &c.* saith *Marsil* in his Booke *de rebus Eccles. cap. 12*. But heed must be taken to the Equivocation of the word Parish ; for it hath not alwayes had one and the same acception. Sometime when nothing is named but a Parish, the whole Diocese is understood, and this notion of the word often occurs in the Councils and else-where. According to this sense *Barbatia* spake a wide word for the Pope, where he saith, that in respect of him, the whole world was but one Parish, *trah. de praesent. Cardinal*. Otherwise, A Parish is taken for such a part of the Diocese, which is assigned to some Priest, arbitrarily sent and maintained by the Bishop ; for it is to be noted, that such a Parish paid all dues to him, and he to his Clergie, for the primitive communie of living, because of inconvenience ceasing in the Church, this custome was introduced, that all Church dues should be at the Bishops disposing, so, that being geometrically divided into foure portions, he should have one part, and his Clergie another, the third to be distributed to the poore and strangers, and the last part to be reserved to the Parishioners for the repairing of Churches. And that this was the use, especially of the Romish Church, plainly appeareth by the answer of *Gregorie* to our *Austin*, in *Bede, lib. 1 cap. 27*. The collection of these dues was committed to the care of the *Chorepiscopus*, as appeareth by an Arabick Canon of the first Councell of *Nice*, which together with other Oecumenicall Councils, and those Canons which are called the Apostles, and some history of the primitive times, out of *Clement &c.* wee enjoy and esteeme as a most peculiar monument transported hither out of the Easterne world, and placed in our publick Librarie, by the bountie of a worthy Benefactor Sir *Thomas Roe*. The latter end of that Canon saith thus, but for our great want of Arabick Characters, it must be read in

Hebrew — וניטר איצא אל מא פי כלטאנה מן אלקרי ורסאחיק פיפרצ
עלי כל קריה וארסאחיק שיא לה בקדר אחתמאלהם לנפקתה אעני

תניבה לה as concerning the limits or bounds of a Parish, as twelve
 ויאתיה כה meane men of the cuntry, who are upon like depositions
 פי כל שנה to give up their verdict. But for the limits of Bishopricks,
 ריאתיה

קאימה לבן ברסם מינה אלמסקה ועליה אינא צדקאת ואנאכיאת

where the Canon provi- : וכא יעוי כה אלכנה לגרי כינה וכינהם אלאלפה
 deth, that it should belong to the charge of the *Chorepiscopi* to see, that in every of their sever-
 rall Cities and Countrey-villages these dues should be collected proportionably, as every
 place should be found able; and that these dues so collected, should bee every yeare
 brought to the Bishops place of abode, that there they might bee disposed of toward the
 maintenance of the Bishop, the reliefe of the poore and strangers, and the encouragement
 of his Clergie, that so there might be concord and unanimity betweene him and them, &c.
 The Latine Translation of these Canons is set forth by *Turrism* and *Alphonf. Pisan.* and
 is to bee found in the 1. Tome of the Councils set forth by *Binius*. In the Translation,
 this Canon is the 54. but hee that mindeth to see it in the Arabick, must looke for the 58.
 Some say, that these Canons are supposititious; I only know that they may bee so, not
 that they are: and however it be dull to entertaine any thing that shall be obruded, yet the
 rejection of ancient Authors and Councils should be warily concluded upon. Thus much
 notwithstanding is recorded, that by reason of the Arian incendiaries, a compleat number
 of the Canons of this Council was so rarely found, that *Athanasius* himselfe, who was
 present at the Synod, was forc't to send into these parts, to the Bishop of Rome that then
 was, to desire from him a perfect copie, because in the Easterne world, few or none had
 escaped the fire of the Arians. This wee have out of those Epistles, which are supposed to
 have past betweene Pope *Marke* and *Athanasius* concerning the burning of the decrees of
 this first *Nicene* Council; and if these be true, the Canons here are the lesse to be sus-
 pected: But against the credit of those Epistles, the Cardinals *Bellarmino* and *Baronius* have
 consented, and it may well be thought they have some cause, for that these Canons much
 availe their faction, and depend not a little upon the authoritie of these Epistles; yet their
 reasons against these Epistles are, for the most part, chronologicall; and because such as
 these are subject to much hazard, therefore our confidence in beleieving may be arbitrarie,
 & at our own disposing. But be these Canons how they will, yet a most expresse monu-
 ment of this *Quadrupartite* division of Church dues, may be noted out of an Arabick Ca-
 non of the Council of *Antioch*, Canon 25. I say, an Arabick, not for curiositie, but be-
 cause I finde this matter more fully there set downe, for the Greeke saith thus, *Επισκοπος
 εχει οντι ο βασιλευς παρασκευαν εξουσιαν οςε διοικειν εις παντας τους δεομενους
 της εκκλησιας η φερεται*. That the Bishop shall have the Church dues in his power,
 that he may dispose of them to every one that needeth, religiously and in the feare of God.
 But the Arabick Canon more distinctly — אלמסקה משלט עלי מתאע אלכניסה
 ומאדהא אן יקסמה ויודעה בין כהנתה ועלי אהל אכרשיתה ועלי אהל
 אלקרה ואלמסאכין ויאחד הו מן רלך קותה ומא תחתאנ אליה:
 That the Bishop shall have at his disposing the Church dues and revenues, to the end, that
 he may divide and distribute them to his Clergie, to the Parishioners (for the repairing of
 Churches) to the poore and needie, and that he may take to himselfe what shall be neces-

I acknowledge that they are Temporall, for that they were not primarily designed out by Ecclesiasticall men, and their direction, but were assigned to Provinces, or Shires, first described and distinguished by Princes: but for Parishes, neither reason nor antiquity concures with them, that they should be temporall, or that they should be usurped or challenged to be of the temporall cognisance.

And so much for those Prohibitions, which they commonly frame out of the 37. and 32. of Henry the eight, not

farie for his owne expence &c. This *Quadrupartite* Division was used in most places, but most principally in the Rom^a Church. For in some other the Bishop had the third

part. See *Filescus* in his Booke *De Sacra Episcoporum Autoritate*.

Concerning the originall of a Parish in these two former Acceptions, it may be acknowledged to bee a device of the ancient Roman Bishops, and to have beene derived from them to other Nations. But a Parish may be also taken for such a part of the Diocesse, which is limited to some residentiarie incumbent, allowed by the Bishop, and maintained by the Church dues in his owne right. And this consideration of a Parish most of all agreeth with those which we now have. And it may very well be supposed, that these later Parishes have had their beginning from the inconveniences of the former. And the abatement and limitation of these, how ever it might have speciall encouragement from the devotion of lay men, yet the principall stroke was alwayes given by the Ecclesiasticall, to whom it pertained to consecrate the Churches, and make them baptisteriall. And that the dividing of Parishes should of right belong unto Ecclesiasticall men, it may be the more reasonable, because the first that ever divided any Parishes were the Roman Bishops, and they did not onely so, but also gave direction to other Prelates in their severall Provinces to doe the like, especially if that be true, which wee have formerly cited out of that Epistle of Pope Denis to the Spanish Bishop. However Alexander the third C. *Avantissa. De Prabend. & Dig.* gave command to the Canons Regular of *Torke* Diocesse, that they should not presume to divide Parishes *sine consensu Archiepiscopi*. And some encouragement may be had from a decree made in a Synod holden at *Wolmynster*, about the year 1147. which saith, c. 4. *Nullus Abbas, nullus Prior, nullus monach^{us} Monachus aut Clericus Ecclesiam, sive decimam, seu qualibet beneficia Ecclesiastica, de dona laici accipiet sine proprii Episcopi autoritate, & consensu: quod si praesumptum fuerit, irrita erit donatio hujuscemodi.* Chron. MS. Biblioth. Bodleian. And the like intimation is given in another Councell, holden at the same place, in the year 1149. called by the most Reverend Father in God *William*, then Lord Archbishop of *Canterbury*. There it is said cap. 10. *Ut nulla persona Ecclesias vel decimas seu qualibet alia Ecclesiastica beneficia des vel accipiat sine consensu & autoritate Episcopi.* If wee apply these decrees to the matter in hand wee may deduce some thing answerable to that which is inquired. Besides, Lay men were not to meddle with the ordering of Tythe-payment, and yet in this division of Parishes, a principall respect was had to the consideration of Tythes, and therefore it was, that Parishes were limited with such great care and curiositie. For *Bartol* said, That if it were doubted concerning a house, in what Parish it should stand, it must bee conceived to bee of that into which it opens, if it opened severall wayes, a posterne gate was not respected, but it was judged to belong

unto that Parish into which it opened at the chiefe Gate.

that there are no more but these, but that having a taste of these, there may be like Judgement made of the rest.

At what time this last kinde of Parishes began else where, wee enquire not; when they began here at home, wee finde not, unlesse wee understand such as these in the Division of *Honorius*: however they must be in use before the dayes of *Edgar*, as it seemeth by the *Saxon Lawes* of that time. See the *Lawes of Edgar*, cap. 1.

S E C T. 5.

That the clause of treble Damgages in the 13. chapter 2. Edward the sixt is to be sued in the Ecclesiasticall Courts onely.

OUe of the Statute of the 2. of *Edward the sixt* cap. 13. they raise many Prohibitions, the first whereof in order of the Statute, although the last in practise, is the prohibition of treble damgages, upon not dividing and setting out of Tythes, or at the least, for the not compounding for them before they be carried away: Which forfeiture they suggest, and thereupon bring a Prohibition, and so draw the whole suit of Tythes into their Courts, contrary to the true meaning of this statute, which would have those treble damgages, in case of not justly dividing and setting out, or not compounding for the Tythes before they be carried away, be no lesse recoverable before an Ecclesiasticall Judge according to the Kings Ecclesiasticall Law, than the forfeiture of double value (by the letting and stopping of them to be carried away, whereby they are lost, with the costs thereon growing) is remediable at the same Law: For albeit the clause which is to redresse this wrong, be put after that part of the Statute, which concerns the stopping and letting of Tythes to be carried away, yet when there is as great reason hatt it should stretch it self to the first branch of the provision, as to the second, and the second branch hangeth on the first by a conjunction copulative, & there is no heterogeny or disparitie in the matter, whereby it may not be as well verified in the one branch, as in the other, I see no reason why it should not equally respect them both, according to the rule of the Law; *Clausula in fine posita refertur ad*

e. 6. tit. 28. l. 1.

omnia

omnia precedentia, maxime quando non resuleret intellectus contrarius iuri, as here it doth not: for the intendment of of either branch of the Statute is, to procure by their severall forfeitures, a just and true payment of Tythes; the recovery whereof, as the precise words of the Statute in one member restraine unto the Ecclesiasticall Law; so the Identitie of reason in the other member doth confirme it unto the same Law, for where there is the like reason or equitie, there ought to bee the like disposition or order of Law.

L. Illud ff. ad l. Aquilam.

Beside if the principall cause it selfe be triable in the Ecclesiasticall Court, why should not those things which hang thereon bee tryed in the same Court, for they are but as it were accessories to the principall, and so not onely follow the nature of the principall, but also belong to the Court of the principall, and are determinable where the principall is, for otherwise happily there might fall out contrary sentences of one and the selfe same thing, the one condemning, the other absolving.

Further, in that Court wherein the course of Justice already is begun, the cause may with lesse labour and easier expences be ended, being for the most part determinable by one sentence, than that a new processe thereof should begin before another Judge, who knoweth little or nothing of the principall matter, and therefore cannot so easily decide the accessorie. Lastly, those which take this course, save the suitors a forfeiture, then to draw the originall suit, whereupon the forfeiture grew into question, bring in a proceeding far different from the common stile of all well ordered Courts, in all Nations; among whom the confusance of the cause, and tryall thereof goeth before, and the forfeiture on execution thereof followeth after. But in this *Hyss Iron prison*, the execution is in the forward, and the tryall is in the rewarde. In which doing they deale much like as *Cacus* the Giant dealed with *Hercules Oxen*, who, to the intent that *Hercules* should not finde what way they were gon, drew them

backward by the tayle into his Cave; but as that device served not *Cacus*, but that *Hercules* had his Oxen againe, so it is to be hoped, the Reverend Judges of the Land, will not long suffer this subtiltie to prevaile, but as it came in like a Foxe, and reigned as a Wolfe, so in the end it shall dye and vanish away like a vaine device, much like the destinie of *Boniface* the eighth: for the reverend Judges are not onely to minister justice betweene man and man, so that every man may have his owne, and none be oppressed by an other, but also they are to carrie an upright and indifferent hand betweene Jurisdiction & Jurisdiction; yea though themselves be parties to the matter in question, so that one Jurisdiction eate not up an other, as the Locusts in *Egypt* devoured up all the greene things of the land.

S E C T. 6.

That the naming of Law or Statute in a Statute, doth not make it to be of the Temporall cognisance, if the matter thereof be Ecclesiasticall.

ANother rendezvous they make of the words of this Proviso (Law, statute, priviledge, prescription, or composition reall) as though all which passeth under any of these tearms must belong to the triall of the Common Law, and not to the cognisance of the Ecclesiasticall Law, and that forsooth, because these words and tearms are expressed in the Statute: which is much like unto that, as one would needes have a house, to be Master Peacocks house, because hee saw a Peacock sit upon the top thereof: But it is not the naming of a thing in a Law or Statute, that makes it to be of the Temporall cognisance, or otherwise: but it is the nature or qualitie of the thing named, that rangeth it under the one Law, or the other. So that if the matter ordered in the Law or Statute be Temporall, the cognisance shall bee Temporall; if Spirituall, then the case is determinable in the Ecclesiasticall Law: for this Proviso is not prohibitorie,

as the last Proviso of this Statute is, whereby Ecclesiasticall Judges are forbidden to hold plea of any thing that is in the said Proviso contained; but it is rather directive, and sheweth where the Ecclesiasticall Judge is to give way to immunities, and to pronounce for them: so that for any thing is contained in this Proviso to the contrary, the cognizance of these matters, especially, Priviledge, Prescription, and Composition, still remaineth at the triall of the Ecclesiasticall Law, as they did before this Proviso was made for Tythes, and other Ecclesiasticall dueties, as may appeare by the severall titles in the same Law hereon written.

And for the other words, [Law and Statute] therein mentioned: (when as the King hath two Capacities of government in him, the one Spirituall, the other Temporall, and his high Court of Parliament; wherein Lawes are made, doth stand as well of Spirituall men, as Temporall men, and so ought to stand in both houses, if the ancient Booke *De modo tenendi Parliamenti* be true and authentically, which makes the upper House of three States, the Kings Majestie, the Lords Spirituall, and the Lords Temporall; and the lower House in like sort of three other, the Knights, the Procurators for the Clergie, and the Burgeses; and his Majestie hath within this Realme aswell Ecclesiasticall Lawyers, as Temporall, which are no lesse able to judge and determine of Ecclesiasticall matters, then the Temporall Lawyers of temporall businesse) It is not to be imagined, but as his sacred Majestie will have those Lawes to be held Temporall, and to have their constructions from Temporall Lawyers, which are made and promulged upon Temporall rights and causes: So also his Highnesse pleasure is, and ever hath bene of all his predecessours, Kings and Queenes of this Land, that such Lawes and Statutes as are set out and published upon Ecclesiasticall things and matters, shall be taken and accounted Ecclesiasticall, and interpreted by Ecclesiasticall Lawyers, although either of them have interchangeably each others voyce in them, to make them a Law.

De praescript.
lib. 2. tit. 26.
De privileg.
lib. 5. tit. 33.

And

¶ And that the King doth infuse life into either of the Lawes, when as yet their substance is imperfect, and they are as it were Embryons, is in temporall matters, by his temporall authoritie, and in spirituall matters, by his spirituall authoritie, for to that end he hath his double dignitie in that place, as also the Ecclesiasticall Prelates sustaine two persons in that place, the one as they are Barons, the other as they are Bishops: So that even the orders of the House doe evince, that there are two sorts of Lawes in that place unconfounded both in the head and the body, although for communion sake, and to adde more strength to each of them, the generall allowance passeth over them all. And as they rest unconfounded in the creation of them, so ought they to be likewise in the execution of them: & as the Temporall Law sorts to the Temporall Lawyers, so the Spirituall Lawes or Statutes should be allowed and allotted unto the Spirituall Lawyers.

And as the nomination of these words Law or Statute in this precedent Proviso, makes not the Law or Statute Temporall, but that it may remain wholly Ecclesiasticall, by reason of the Spirituall matters it doth containe, & the power of him that quickneth it, & powreth life thereinto: so much lesse can the inserting of these tearmes, Priviledges, Prescriptions, or Composition reall, intitle the Common Law to the right thereof, or the Professours of the said Law, to the interpretation thereof. for that matters of these tides so farre as they concerne Tythes, and other Ecclesiasticall dueties, have beene evermore since there hath beene any Ecclesiasticall Law in this Land (which hath beene neere as long as there hath beene any profession of Christianitie with us) of Ecclesiasticall ordinance, neither ever were of the Temporall cognisance, untill now of late, that they transubstantiate every thing into their owne profession; as *Midas* turned or transubstantiated every thing that hee touched into gold.

C H A P. III.

S E C T. I.

How it comes to passe, that when tythes were never clogged with custome, prescription, or composition under the Law, they are clogged with the same under the Gospel, and the causes thereof.

BUt here it will not bee amisse to inquire, (since Tythes came in the beginning of the primitive Church, within a little time after the destruction of *Jerusalem*, and the subversion of the Jewes policie, unto the Christian Church and common-wealth, void of all these incumbrances, as shall appeare after by the testimonie of sundrie of the ancient Fathers, which were neere the Apostles time) how it comes to passe (since Tythes are no lesse the Lords portion now, than they were then, and in the Patriarches time before them) that these greevances have come upon them more under the Gospel, than ever they did under the Law: for then never any Lay man durst stretch out his hand unto them, to diminish any part thereof, but hee was charged with robbery by the Lords owne mouth; and in punishment thereof, the heavens were shut up for giving raine unto the earth; and the Palmer-worme and Grasshopper were sent to devour all the greene things upon the earth. And for Ecclesiasticall men, it is not read any where in the Scripture, that ever they attempted to grant out any privilege of Tythes to any person, other than to whom they were disposed by the Law, or to make any composition thereof betweene the Lay Jew, and the Lords Levites: every of the which have beene, not onely attempted against the Church in Christianitie, but executed with great greedinesse: so farre worse hath beene the state of the Ministry under the Gospel, than was the condition of the Priests and Levites under the Law.

Malach. 3.

Y

S E C T. 2.

SECT. 2.

That the causes are two fold: First, The violent intrusion of Lay men; and secondly, The over-much curiositie of Schoole men; and first of the first cause, and therein concerning Charles Martels Infendations, and the violent prescriptions ensuing thereupon.

THe beginning whereof, although it be hard for mee to finde out, because there is small memory thereof left in Stories; yet as farre as I can by all probabilities conjecture, this great alteration in Ecclesiasticall matters, came by two occasions: the one by the violence of the Laicie, thrusting themselves into these Ecclesiasticall rights, contrary to the first institution thereof; for when they were first received into the Christian world, they were received and yeilded to for the benefite of the Clergie onely, as in former time under the Law, they had beene for the use of the Priests and Levites onely: The other was, the too much curiositie of Schoolmen, who being not content with the simple entertainment of Tythes into the Church, as the ancient Fathers of the primitive Church received them, would needes seek out how, and in what right, and in what quantitie this provision belongs unto the Church, wherein they did by their overmuch subtilty, rather confound the truth, than make that appeare which they intended to doe. By the first of these was brought in that great Prescription, which is called the Prescription beyond the *Lateran* Councell, whereby Lay men held Tythes in fee, without paying any thing therefore unto the Church; and out of that issued the rest of those pettie Prescriptions, which wee now have, which are nothing else but imitations of the first. By the second came in Priviledges, Customes, and Compositions; or if they came not in wholly by them, yet surely were they much strengthened by them; but of either of these after in their places. But for that of all these forenamed greivances in the Church, as farre as my reading serves mee, Pre-
scription

scription is the eldest, and first rusht into the Church, and violated the Liberties thereof; I will first begin thereby, & shew upon what occasion it first seised upon the Church, and prevailed against her, and then will I speake of the rest in order.

It is out of question, that from the time of *Origen*, who lived within foure score yeares after the death of Saint *John* the Evangelist, as also did *Cyprian*, who was his coequall in time, and so along by the ages of *Chrysostome*, *Ambrose*, and *Augustine*, and some of the purer Popes, as *Urban* the second, *Dionysius*, and *Gregorie* the great, there was good use of Tythe in the Churches, where Christian Religion was imbraced, as may appeare by every of their testimonies, that God had not appointed it to bee a provision onely for such as served at the Altar under the Law, but also was purposed by him from the beginning, to be a maintenance for the Ministerie under the Gospel: and therefore *Origen* in his xi. Homily upon *Numbers*, speaking of Tythes, saith thus, I hold it necessarie that this Law or precept be observed according to the letter: and upon the 22. of *Matthew*, hee thinketh Christs words uttered there as concerning Tythe, to be a precept no lesse necessarie for the use of Christians, than they had beene for the Jewes: and therefore hee accounteth Tythe neither ceremoniall, nor judicall, but morall and perpetuall. *Cyprian* in his lxvi. Epistle, adviseth the Clergie of his time, since they had Tythes allotted unto them for their maintenance, they should not absent themselves from Gods service. *Chrysostome* upon the viij. of the *Acts*, useth this argument to persuade husband-men to pay their Tythes truly unto the Church, That it is good for them so to doe, for that there are continuall prayers and intercessions made for them by the Ministerie. *Jerome* upon *Timothie* saith, The precept of payment of Tythes, is aswell to be understood in the Christian people, as in the Jewes. Reade *Ambrose*, in his Lent Sermon, and *Augustine* in his xliij. Homily, and *Gregorie* in his xvj. Homily, and you shall finde no lesse

plaine places for the continuance of the payment of Tythes among the Christians, than the former were. Adde to these the practice of *Dionysius* himselfe, who by *Jeromes* account flourished in the yeare 266. who not onely divided out Parishes, drawing the example thereof from Saint *Paul*, who first appointed Bishops in Cities, but also assigned orderly to every Parish his Tythes. All which held in the Christian common-wealth, in a decent and comely sort, untill the irruption of the *Hunnes*, *Gothes*, and *Vandals*, upon the Christian world, who first invading *Italie* under the Emperour *Justinian*, did for many yeares so harrow the whole Countrie, and specially *Lombardie*, as that they left not almost a man of excellent Religion any where unpersecuted, overturned Churches, burnt Libraries, overthrew Schooles of learning, and to be short, what wickednesse did they not? insomuch as *Gregorie* the great, being otherwise a very good man, and one that did relye himselfe upon the providence of Almighty God, verily thought and taught that the end of all things was then come: but after those fierce and barbarous people once set their face to goe against *France*, (which had beene hitherto free from that inundation) which happened in the dayes of King *Theoderick*, who lived about the 650. yeare of the incarnation of our Saviour Jesus Christ; * *Charles Martel* the Father of *Pipin*, after King of *France*, being then great master of the Kings house, would not (although otherwise hee were a very victorious man, and valiant Captaine) oppose himselfe against them, unlesse the under-clergie of *France* would be content to resigne every man his Tythes into his hands; that thereby hee might reward the Souldiers, and support the charges of the warre then present: which the poore Clergie, in respect of the eminent danger, and for that *Charles Martel* himselfe did solemnly vow and promise,

*Hospinian. de
orig. Monach.*

* Concerning
Charles Martel
wee finde in
Storie thus.

That though
hee was a man
of a rare and
warlike spirit,
and vouchsafed
great protection
to the perillous
times hee
liv'd in, yet
also wee finde,

that he gave occasion to many miserable inconveniences to follow, by suffering himselfe to be so notorious and unusuall an example of Sacriledge. For, when his great designe against the *Saracens* stood in agitation, hee refused to put himselfe upon so desperate an attempt, unlesse the Clergie would yeeld up their Tythes and maintenance for the time

that

that they should be forborne no longer, than for the time of the warre, and that they should be restored unto them againe at the end of the warre, with a further gratuitie for their good will, yeelded most willingly thereunto, specially the Bishops not contradicting it, leaving to themselves a small portion of their living onely, during the time of the danger. Whereupon *Charles Martel* undertaking the en-

being towards the expences of the warre. This condition the Clergie accepted of, moved thereto by the exigencies of that age, and

the faire pretence of *Martel*, who promised, that at his safe returne he would restore all againe, and that with ample interest, but that *Charles* never did this, these dayes can testifie to those. This fact of *Martel*, if it were so, was execrable, and if it were not, yet the opinion of it hath bene so harshly entertained by Tradition, that we finde him confidently damned in the Legend. And this Storie of his damnation is fastned upon *Euchere* Bishop of *Orleance*, who is said to have scene in a vision this *Martel* in hell torments: and that *Euchere* might beleeve what hee saw, an Angel instructeth him to seeke for *Martel* in his Sepulchre; and so hee did, but found him not, but hee found the place all black, and in stead of *Charles*, a direfull Serpent. See the Annals of *Orleance*. Concerning the damnation of *Martel*, wee have nothing to say, what may bee thought of the vision shall hereafter be enquired. This is certaine and beleeved by all, that this *Charles* was a great oppressour of the Church. For to let passe that of *Hincmare* Archbishop of *Rheims*, *Gregorie* of *Tholow*, *Sigeberi* and others, it is observable, that this could not bee omitted by *Dupleix* himselfe, one of the greatest friends that ever *Martel* shall finde in Historie. For though this Authour in one place spending his credit upon the admiration of *Charles*, setteth him in the same line with *Iulus Caesar* and great *Alexander*, warranting him to be *sans doute le plus grand homme que la France ait jamais produ*, yet else where he could not denie, but that *il avoit banni aucuns Euesques de leur seiges & mis en leur place des hommes lais*, hee had thrust Bishops out of their Sees, and put lay men in their place; and to make up the complement of this sacriledge, hee spared not that Bishop of *Rheims* *qu'il avoit levé des fonts de Baptême*, as *Faucher* hath observed. To weigh downe this grand impietie *Dupleix* bringeth into the scale *cent mille ames*, a 100000 soules converted to Christianitie by the helpe of this *Charles*: but the conversion was wrought by the Archbishop of *Meniz*, and if it were promoted by *Martel* it was well; yet his Sonne *Pipin* thought this satisfaction too little, and therefore *vo'ut estre inhumé le ventre & la face contre terre pour l'expiation des peccés de son Pere*, hee would bee interred with his face and belly downward, to expiate his Fathers transgressions, as *Dupleix* also was contented to observe, and it is to be found in the Antiquities of *France*.

Therefore *Charles Martels* Sacriledge in generall must be granted. But it hath bene also constantly received, that in particular this *Charles* defrauded the Church of her Tythes, as hath bene said. But this passage of the Storie hath found some opposition. One of the first that ever shewed himselfe an adversarie to this opinion, was *Stephen Pasquier*, a man, whom though wee forsake in this particular, yet wee may safely commend for his vastitie of learning otherwise, an ample testimonie whereof he hath given in his Booke *De Recherches de la France*: saying that hee cannot be pardoned for his harsh and envious minde towards the dignitie and Jurisdiction of the Clergie, which discovereth in

Selfe in severall passages of his third Booke. In the same Booke, Chapr. 35. which is *Des Dismes Infeodees*, Concerning the Infeudation of Tythes, he adventureth to o-

verthrow the received opinion. The maine reason hee urgeth (as farre as I conceive him) is, for that those who first and anciently wrote the Historie of their Kings, or otherwise tooke notice of the acts of *Charles*, doe not accuse him of any such Infeudations. But to this I suppose some answer may be conceived in this manner.

The principall Historiographer of whom wee are to consider in this case, must be *Aimoine*, who wrote the Storie of the *French Kings*, and what was delivered in his Chronicle concerning the times wee aime at, for the most part, made up the Bookes of those Writers that succeeded, for some certaine centuries of yeares. This *Aimoine* (*Stephen* saith) maketh no mention of that Act of *Martel*: 'tis true, neither maketh he mention of any Sacriledge at all, no nor so much as *Stephen* himselfe, and all Writers beleeve that *Martel* was guilty of: And I should wonder if hee had, for *Aimoine* lived in the time of *Charles* the great, and what he wrote concerning him and his ancestours, hee received from *Autmare* Chaplaine to the same *Charles*, and this is too neere the time of *Martel* for a true Historian. Indeepe the lives of pious Princes may be written before their deaths, and if there happen an unworthy passage, it is not corrected in their Storie, but their Conversation: But when a great King proves not good, his first Historians must be worse, for no Subject may dare to write what such a Sovereigne could commit. And therefore if an ill Act occurre, the Historian must dissemble or defend it; for what ere be after thought of great mens actions, yet when they are newly done, either they must not be mentioned, or if they be, they must be magnified. Therefore *Autmare*, who depended upon *Charles* the Great, must not tell such tales of his Grandfather. And for this cause it is, that when *Aimoine* speaks of *Martel*, he styles him *virum sagacissimum*, and *virum egregium*, adding moreover that his achievements were accomplished *Christo in omnibus praside*: See lib. 4. c. 57. where also relating his victories, he compareth the siege of *Avignon* to that of *Iericho*, as if *Charles* had march'd on like those great Commanders of *Isr'ael*, and the walls of *Avignon* had fallen downe like those of *Iericho* at the very found of *Martels* Trumpeets. Thus *Aimoine* observes the time hee lives in. So *Boniface* Archbishop of *Mentz* in *Martels* dayes, though perhaps hee could have said more than hee did, if that be not enough which hee hath said, that this *Charles* was *Ecclesiasticarum pecuniarum in proprios usus commutator*; yet that which hee did say seemeth to have bene no otherwise publickly knowne than in an Epistle of his to *Ethelbald*, one of our *Mercian Kings*, a fragment whereof is inserted into the Storie of this *Ethelbald* by *William of Malmesbury*; but in other Copies of this Epistle, the clause which concernes *Martel*

in that action, and the same assured to them and theirs for ever in fee. And this is the first violence that ever Tythes suffered in the Christian world, after they left the Land of *Jurie*, and came to inhabite among the Christians; which albeit was a nefarious act, and nothing answerable to the late mercie that God had vouchsafed them in conquering of their enemies, yet there wanted not like sacrilegious

occures not; for of late dayes, by the great industrie of *Scotarius*, we come to see a volume of thar Archbishops Epistles, the nineteenth

whereof is that which was directed to *Ethelbald*. But there the passage of *Martel* cannot be found. And the truth must be, that if *Bonsfere* have any such thing to say of *Charles*, hee must send it farre enough, for it might not bee told at home.

That which hath beene said may passe for a reason, why so great a crime of *Martel* was not so publickly recorded till time could weare out the danger, and the Historian could write the Act with as much confidence and securitie as *Martel* did it. Therefore it is, that though the Writers began betimes to touch at his impietie, yet they struck not at this master piece but by degrees.

Paulus Aemilius, a diligent Writer, and one that spent 30. yeares to compile the French Storie, seemeth even in those dayes to report this timorously, as if it had beene when too soone to give a just account of this Sacriledge. For when hee commeth to *Charles Martel* hee saith, that there passed upon him a diversie rumour. For some gave out *Humminum Ducum Imperatorumque gloriam transcendisse*, that hee had transcended the renowne of all Kings and Captaines that ever were before him. Others reported, that hee onely seem'd to doe so in the eyes of ordinarie men, and that hee had *decimumvum sacrumque militarium virum attribuisse*, given over the divine right of Tythes to his militarie men. But it is necessarie for the Reader to observe, that the Authors of the first report were, as *Paul* saith, *Summis viri* great men, but those that related the second were *Sancti viri* good men. And the first sort may, but the latter ought to be beleev'd. But wee shall finde this matter more confidently related by the French Historians, who spare not to set it downe plainly and ingeniously, though it concerne their Storie more than others that this *Martel* should be blamelesse.

An ancient Chronicle of theirs *Le Roier Historial de France* part. 2. concerning this passage saith thus, *Pan le conseil des Evesques luy furent donnez, les desmes des Eglises pour gaiger ses cheualiers, qu'il promist rendre en faire de plus grands biens a l'Eglise s'il vivoit longuement.* Fol. 21. hee saith, That *Charles* did bestow the Church Tythes upon his Knights, and that he promised to restore them againe, and much more; but this must be *s'il vivoit longuement*, if hee liv'd long enough. How long *Charles* would have lived to doe this, I know not, but that he lived not so long as to see it done, wee are sure enough. The like is reported concerning this passage, by *Nath. Gales*, but because this Author hath beene corrected and enlarged by *Bellafosse*, wee shall use his words, and they are these, *Pour fournir aux fraiz et despenses qu'il convenoit faire pour lesdites guerres que ledit Charles Martel avoit contre les Sarrasins ennemis de la Chrestienté, ledit Charles Martel par le conseil des Princes donna et bailla aucunes des desmes que tenoyent les Eglises a ses gens d'armes moyennant qu'il promist que si Dieu luy donnait*

minides

ne eſt grace
de venir au
deſſus des diſmes
Sarraziſms il
les reſtituerait
eſt plus grands
biens y donne-
rois, &c. ſee
that which fol-
loweth in the

mindeſ in all Chriſtian Lands, which did imitate this wic-
ked fact of *Martellus*, inſomuch as the example hereof paſſ-
ed over the *Alpes* into *Italie*, and mounted above the *Py-*
renæan Hills into *Spaine*, and within a ſhort time after ſayled
over into *England*. in ſuch ſort, as that even to this day ſun-
dry monuments thereof appeare every where in the Land,
where any title of immunitie is challenged from payment

Author. The ſame is the relation of *Du Tillet*, *On ſeint qu'il eſt damné en enfer pource qu'il*
print quelque partie des diſmes pour aucunement ſatisfaire aux Nobles, &c. Thus alſo
Seigneur Du Hailan, *Il donna les diſmes*, Hee gave the Tythes (to his Nobles) and hee
promiſed to reſtore them againe; but *Du Hailan* addeth, *Ce qu'il ne peut contrefaire*
comme il avoit promis. To the ſame purpoſe *Fauchet* in his *Antiquitez & Hiſtoires Gau-*
loises, *Livre cinquième, chapitre 21.* Leur oſtant une partie des diſmes pour advantager
la Nobleſſe de ſon partie: yet hee ſaith, there were that would excuſe this, *diſant*
que ce fut pour ſ'ayder en la neceſſité des guerres qu'il eut contre les Sarraziſms.
This indeede may ſerve to excuſe him for taking the Tythes, but it yeelds no pretence
for his not reſtoring of them. And becauſe 'tis below this ſacriledge to admit of any ex-
cuſe, therefore *Charles* his great friend *Dupleix* ventures to defend it. This *Dupleix* was
a later writer than the reſt, and one that hopeth to bee accounted a better, as it ſeemeth
by the cenſure, which in his Preface hee paſſeth upon thoſe who wrote before him. But
let us heare what hee ſaith in defence of *Martel*: *D' ailleurs ils furent encore plus*
offenſés de ce qu' apres la journée de Tours (ſo the French call this expedition of *Charles*)
il recompens la Nobleſſe de partie des diſmes du Clergé avec promeſſe de reſtitution: de
laquelle de puis il ne tint compte. Mais en cela l'ingratitude & l'avarice du Clergé
eſt plus blaſmable que l'entreprife de Charles. Car n'eſtoit il pas raifonnable que ceux
qui apres beaucoup de deſpence avoient expoſé ſi genereuſement leur vie pour la de-
fenſe de l'Egliſe fuſſent recompensés de quelque petit portion du revenu d' icelle? &c.
Hee granteth the paſſage, But (ſaith hee) in this the ingratitude and avarice of the Clergie
is more to be blamed, than the enterpriſe of *Charles*, for was it not good reaſon, that
thoſe who beſide their coſt and charges, had ſo generouſly hazarded their lives for the
defence of the Church, ſhould bee rewarded with ſome ſmall portion of the revenue
thereof? &c. Wee anſwer, that the deſigne it ſelfe was truly honourable, but for *Charles*
to free the Church from a forraigne Foe, and be a Barbarian himſelfe at home, makes his
achievement very improper, and utterly darkens the reputation of ſo great a Con-
queſt.

Thus wee ſee, that it is generally beleaved by the French Writers of later times, that
their *Martel* diſtributed the Church Tythes to his men of warre, and that without re-
ſtauration. And if it be asked, from what head theſe moderne Hiſtoriographers could
deduce that paſſage, whereof the ancient had made no mention; it may be replied, that
though this were not publickly recorded by the old Writers *Amoines* and the reſt, yet it
might remaine in the Notes of private men, and being delivered from hand to hand,
might be reſerved for ſuch a time as could indure the relation.

of Tythes, reaching beyond the *Latteran* Councell, which But *Steven Pasquier* saith, can descend from no other head, than from that fact of Charles Martel; neither was there any redresse thereof that the Centuriatours of

Magdeburg referre him to the 2. Tome of the Councels for a Synod holden under *Carloman*, where amongst other Canons, this was one, *Decimus occupatus à prophanis restitimus*: And if this be true hee granteth all, for then, saith he, *il n'y auroit pas grande difficulté pour cette opinion*: But hee addeth moreover, that after diligent search made both for the Synod and this Canon, hee could finde no such thing in all the 4. Tomes of the Councels. In that hee searched for this very Canon and found it not, hee deservedly lost his labour, for taking no more heed what the Centuriatours set downe, for they referred him not to these words of the Canon, but to this Councell in other words; but hee saith, that he could find no such Councell, no not in all the 4. Tomes, but he must needs be deceived, for this Synod is not onely extant amongst those 4. Tomes, but also in all the four editions of the Councels. The 2. Tome of the Councels, to which hee is referred by the Centuriatours, is the 2. of that Edition which was set forth at *Colen*, in the yeare 1538. and in this Tome is found that Synod under *Carloman*, though otherwise it must be looked for in the 3. Tome of the Edition of *Binius*, *Surinus*, and that of *Venice*. The 4. Tomes he speaketh of, are those of *Binius*, and there he saith, he cannot find this Synod. But hee deceived himself in this manner. In the Edition at *Colen*, the Synod is said to be held under some *French* Bishops, therefore the Centuriatours might call it *Synodus Francica*, and so it was styled afterwards in the Edition of *Surinus*, and that of *Venice*; But in the Edition of *Binius*, this Councell goeth under the name of *Ratisbonense*, or *Augusta vindobonensis*, and by this means *Stephen Pasquier* reading nothing but the Titles, came away with a *Non inventus est*. Therefore the Councell is extant. As for the Canon, though it be not set downe there in the same words, and though it were not set downe in the same sence (which is the most that can be said) yet it is plainly express'd by *Aventine*, from whom the Centuriatours have it, and therethe Canon is *Decimus, bona ecclesiastica occupata à prophanis restitimus*, lib. 3. pag. 216. Edit. Bas. 1580. If *Aventine* were deceived, it needed not be for want of judgement, and it could not be for want of care; for the paines hee tooke to collect those Annals, were prodigious and incomparable. *Multa* (saith he in his Preface) *inlufeci, sudavi, et alii, totam Bosonariam perlustravi, omnia Con- sulornia Sacerdotum penetraui, scrinia, publicas Bibliothecas omnes cursus perscrutatus sum, tabulos, codicillos, donaria, Commentarias, testas, Annales omnium gentium, diplomata, instrumenta, publica et privata evolvi; Signa, sacra, lapides, trophaa, epigrammata sepulchrorum, picturas, inscriptiones, rituales, templa, omnia denique Antiquitatis monumenta exploravi, &c.* and that after all this care, *Aventine* should not finde out the true copies, or not be able to distinguish them from the false, it is altogether incredible.

Therefore notwithstanding what *Steven* hath said, it may seeme very reasonable that we beleeve *Charles Martel* to be the Author of the forenamed Infeudations, and that this is not without probabilite, *Steven* himselfe confesseth, where, he saith: *A la vérité ceux qui ont esté de cest aduin ne sont donnez, de bien grand preste.*

However if these Infeudations had not their originall from *Charles* (as they seeme to have had) yet 'tis impossible they should begin where *Steven* hath appointed, as it is observed by a most learned Writer of our owne. Cap. 6. of his *Hist. of England*, pag. 112.

The great opi- untill the said *Lateran* Councell, before-mentioned, which
which hath bin notwithstanding came neere five hundred yeares after: for
alwayes had of this fact of *Martellus* was done about the sixe hundredeth

Steven Pas-
quier's learning, wee are most ready to acknowledge; but to abate any prejudice that may
arise from this, wee have reserved to compare with him two of his owne Countrey-men;
the one is *Filescus*, a most learned Divine of *Paru*; the other is *Gregorie*, a great Civilian
of *Tholom*, either of these may be thought equall to *Steven* in learning, but they are both
different from him in this opinion. *Gregorie* of *Tholom* in his *Syntag. Iur.*, *l. 2. c. 25. num. 7. pag. 50. Edit. Francofurt. 1611.* where hee beleevingly reporteth this
matter of *Martel* out of *Gagum* and *Æmilius*; and having passed the *Storie*, hee accepteth
also the vision of *Euchere*. His owne judgement of both hee delivereth in these termes:
Quod in ultionem tantæ usurpationis videtur accidisse, et ob sacrilegium Ecclesiæ illatum,
cum nullus Princeps, Rex, vel Imperator has decimas usurpare, minisque aliis concedere
Laiscis possit, &c: So *Gregorie*. To the same purpose *Filescus* in his *Querela Ecclesiæ*
Gallicana, where, though hee giveth us to understand, that there were Church-rob-
bers before the dayes of *Martel*, and that in this, *Italie* gave example to the *French*, yet
in all the *Sacriledge*, hee giveth *Charles* the preheminence. And concerning the matter of
Tythes thus hee relateth our of his old manuscript *Chronicle*, *Carolus propter asidua-*
tem bellicam decimas et quasdam alias res Ecclesiasticas Laicis concessit, &c. and having
considered both of the *Storie* and the vision, hee giveth this approbation, *Scrupit hoc P.*
Æmilius, lib. 2. Hist. Franc. priscorum credo nostrorum annalium fide. Purpuratus ver-
bū, purpuratus Scriptor Ecclesiastica Historia pro Martella contra AEmiliū et simili-
dixit. you may imagine his minde, I thinke hee meaneth *Baronius*. Therefore see the *Car-*
dinals unwarie opinion of *Charles Martel* at the year of Christ 741.

It remaineth to set downe what wee have to say concerning that vision of *Euchere*, to
whom it was shewed, that *Charles Martel* was in hell.

It was strange indeede, that those inconceivable tortures of the damned could be made
fantasticall, and that which cannot be feined should be seene in a vision: yet we may nat
thinke these latter times so incapable of a wonder, as not to admit of something that is
strange, we need not goe farre back for a prodigie; what thinke we of the *Starre* in *Cassio-*
pes, which shewed it selfe in the yeare 1572. and the men are yet alive who saw it. An
ordinarie *Starre* it must not be, for the countrey Hinds had spy'd it first, and brought the
newes to *Tycho*: a fixed *Starre* it could not be, for such as those are above a twelve-moeth
standing: that it should be a *Comet*, it cannot be granted, at leastwise not one of *Aristo-*
teles, for all those are placed below the *Moone*, but this *Meteor* was sublimated above
all *planetary* Orbes, as it is evident by the uncontrollable doctrine of the *Parallaxe*: Or
if we could suppose a *Comet* that were not sublunarie, yet neither could this be such a one,
for all these must be raised out of terrestriall matter; but if the whole earth had spent it
selfe into one exhalation, it would have come farre short of making up so vast a body, as
this *Starre* must be, which exceeded those of the greatest magnitude, notwithstanding that
the Earth is exceeded by those of the least. So long as this *Starre* appeared, no man could
say, that the world wanted a wonder, and if we admit such things in the *Celestiall* bod-
ies, why should we exclude the inferior world. Indeed if we be told by the *Metaphrasi-*
st, that the *Crow* stood and mourned over the dead Corps of *S. Vincent*, or that *S. Denis*

and

and threescore yeare after the Nativitie of our Saviour Jesus Christ; but the Councell that reformed it, and was

after his neck
was cut off,
should runne

away with his head in his hand, we make no such haste to beleeve it, yet thus much faith we have, that the Blood of Saints is so precious in the eyes of God, that a Martyr indeed, seldom goeth off without a miracle. True it is, that matters of this nature were most frequent in the primitive times, yet if wee should admit nothing of this kinde without Christ or an Apostle, all Stories would be Legends, & almost every discourse too strange to be true. But it seemeth very convenient for the satisfaction of reasonable Creatures, that these things should be so, for if God did not sometimes interrupt the common course, wee should dote upon the ordinarie meanes, and begin to think, that Nature had no supreamer cause than it selfe. If the Storie of this vision should not be true (wee will not say in every circumstance for wee have promised to doubt of the damnation of Charles, yet, I say, if some thing like to this hath not been) then what shall be thought of all those ancient testimonies of grave and learned men, who are engaged to make this good. To let passe the rest, what shall we thinke of the Relation of Faucher, that a Chronologer should say, *Que de son temps plusieurs gens l'asseurent comme ayant esté presens a la visitation de ladite sepulture & les Evêques des Provinces de Rheims & Rouen assemblez en un parlement tenu l'an huit cent cinquante huit l'alleguerent pour exemple a Louys Roy de Germanie comme histoire veritable adjoustans que Charles estant damné.*

That wee may know what Faucher saith, wee must observe, that in the yeare 858: the Bishops that then were of Rheims and Roan were summoned to a Councell by Lewis the third, but fearing (for good causes) what the successe might bee, they appeared not, nevertheless they wrote an Epistle to the Emperour, where, amongst other matters, advising him to vindicate the Church, they peremptorily alledged the damnation of Martel, and that when he was look't for in his grave by Boniface and Fulrade, he could not be found, but that in stead of him, there issued forth a fearfull Dragon, leaving the place all black, as if it had beene burn'd. And that the Emperour might make no doubt, they enforce the credite of the Storie with this undeniable testimonie. *Nos autem illos vidimus (nempe Bonifacium & Fulradum) qui ad nostram usque aetatem duraverunt, & nobis viva voce veraciter sunt testati quia audierunt & viderunt.* The entire Epistle is extant, and the preservation of it we owe to the learned Baronius, in whose Annals wee may finde it *Ad annum Christi 858.* So much of it as concern'd the Storie of Martel, was cited by Gratian 16. q. 1. *post Can. 59.* It is also related by Mariannus Scotus *ad annum Christi 764.* but not to bee look't for in the printed Copies, for we read it in a manuscript of our publick Libraries, which hath much more of Marian to shew, than ever yet came forth, for it exceedeth those that are printed by a third part, and (which is more to be noted by us) it is constantly interposed with the Synchronismes of our owne Storie. Yet it would be enquired, whether Marian bee Author of all that hee is there entituled to, because at the yeare 1054. pag. 351. the manuscript saith thus, *Eodem anno natus est Marianus Hibernensis probabilis Scotus, cujus studio & labore hoc Chronicon placellum est de diversis libris conditum.*

The French Historians, for the most part, disparage this vision for feare of Martels damnation, yet Nichol. Gilles in Belleforest relating the Storie, concludeth it with a sober demurre, *Mais ce qu'il en est je ne sçay rien cest a Dieu a le sçavoir:* But, saith hee, what to thinke of this, I cannot tell, God he knoweth.

But of Charles Martel thus farre, this onely may briefly and confidently bee added, That as he came improperly into the world, so he went unusually out; for he was borne a Bastard, and died miserably.

holden under *Alexander* the third, was not celebrated before the yeate of the Incarnation 1189. neither was the reformation thereof at that time totall, nor suitable to the first institution of Tythe among Christians.

* Irreligious people have alwayes beene so backward to do the Church this great right, that they have oftentimes bin overtaken with the Curses both of God and Men. Sevrall *anathemae's* out of severall Synods might be urged, but the most notable proceeding against this Sacriledge may be found in the Generall Sentence of Execration, denounced foure times every yeare. Something to this purpose was said before *Chap. 2. Sect. 1.* out of an ancient Booke which I have, where those Church-robbers are branded with the *Woze* and the *Lasle Curse*.

It remaineth, that in this place wee declare that matter more fully out of the old English *Festivall*. and out of the Articles of the Generall greater *Curse*, found in *S. Pauls Church at Canterbury*, in the yeare 1562. according as it is related by *Thomas Becon*, in the Reliques of *Rome*. And first wee will observe what our Ancestours understood by these kindes of Execrations, and what was their *Woze & Lasle Curse*. The *Festivall* saith, that *Cursing* is such a vengeance-taking, that it departeth a man from the blisse of Heaven, from house, hysit, & all the Sacramentes of holy Church, and betaketh him to the Devil, and to the paines of Hell without end: The *Canterbury Booke* saith thus: Wherefore yee shullen understand at the beginning, that this word *Curse* is thus much to say, as departing from God and all good works. Of two manner of *Cursing* holy Church telleth, the one is cleped the *Lasle Curse*, the other is cleped the *Woze Curse*: That wee clepen the *lasle Curse* is of the strength that every man & woman that falleth therein, it departeth him from all the Sacramentes that bene in holy Church, that they may none of hem receave til they bee absolved, &c. The *Woze Curse* is much worse, and is of this strength, for to depart a man from God, and from all holy Church, and also from the company of all Christian folke, never to be saved by the passion of Christ, ne to be holpen by the Sacramentes that bene done in holy Church, ne to have part with any Christian man, &c.

Concerning those that debase the Church of any rightes or dues whatsoever, the Priest in the *Festivall* pronounceth thus: By the authority of God the Sonne, and the Holy Ghost, and his glorious Mother and mayden our Lady Saint Mary, and the blessed Apostles Peter and Paul, and al Apostles, Martyrs, Confessours, and Virgins and the halowes of God. I denounce and shew for accused al thee that franchise of holy Church breake, or dishonour, or bene against the State of holy Church, or thereto assent with word or counsell. And alsoe all thee that prync holy Church of any right, or make of holy Church any lapsse that is halowed or sanctified. And all thee that withhold the rites of holy Church, that is for to say, offe-

them to the Churches from whence they were taken, which had bene most agreeable to the ordinance of the

rings, tythes, rents, or redemptions of holy

Church let or distraine, or breakes, that is to say, if any man see to the Church or Church-yard, wha so him outdraweth, and all those that therto procure or assent. And all those that purchasen letters of any Lordys Court, that proccesse of right may not bee determined or ended. And the *Canterbury* booke saith: All those ben accursed, that purchasen writtes or letters of any leud Court, or to let the proccesse of the Law of holy Church of causes that longen skilfully unto Christen Court, the which shuld not bee demed by none other Law, &c. And all that maliciously bidden holy Church of her right, or maken holy Church Lay-fee, that is, halowed & blessed. And also all those that for malice or wrathe of Person, Vicare, or Preiste, or of any other, or for wrongfull covetyse of himselfe with-holden rightfull Tythes and Offerings, rents or mortuaries from her owne partly Church, and by way of covetyse falselyche againe taking to God the worke, and to hem selfe the better, or else turne hem into another use, than hem oweth, or done hem in other place after thei owne will, so that they be not done to the same place that they shoud be, or let by word or by dede any man or woman for to doe her god will and her devotion to God, and to holy Church. For all christen men and women bene harde bound upon paine of deadly Anne, not oneliche by the ordinance of man, but both in the old Law, and also in the new Law for to pay truliche to God and holy Church, the tythe part of all manner of increase that they winnen truliche by the grace of God, both with her travell and also with her craftes, whatsoe they be truliche gotten. Alsoe the tythe part of all manner fishes, and foules, and beasts both wilde and tame. And all manner of frutes that growen out of the earth. Alsoe all that swittingly or wilfully tythen falsly, that is to say, that geven not to God and holy Church the tenth part of every wyunning lawfully wonnen in merchandise, or in any other craftes withdrawen only that expence and the collage that needfuly must be made about the thing, whereof the wyunning is gotten, not tything the wyinning of one marchandise with the losse of another. And all those that of the frutes of the earth, or of beast, or of any thing that neweth in the yeare, geven not the tythe wholy withouten any collage. All those that falsly tythen taken to God the worke, and holden the better to her owne profite, against the ordinance of Boniface sometyme the Archbyschoppe of Cantorbury; by the which ordinance throughout the Province of Cantorbury shuld be one manner aring of tythes in this manner wise. Of all manner of frutes of earbis, of gardens withouten any manner of cost abating: of hey where ever it groweth, in greates meades or in smale as oft as it neweth: of neweing of all manner of bestial, of calfe, or of lambe from seaven upward into the tee: and fro fyr downward for everyche of hem an halfe penny: but if the Person or Vicary will abide till another yeare, and tell thilke that leven, and take the other beast that followeth: of woole that is shoren, of felles fro purification of our Lady; of milke all the while that it dureth, as well in winter as in Sommer, but if they will doe grea therefore to the Person, or to the Vicary for the profite of holy Church. Of fishyng, of fouling, of vend-

son, of beere,
of all other
good right-
fully women,
that newen
by the yeare:
of profite of

milke and sweris, of ffishng noe cost abate but to the very value shall the tythe be payd: of lelewys, communys, severelis, shall the tythe trulyche be payd, after the number of the beselis, or the dapes as it is most profite to holy Church, all workemen, and chapmen that wyppen on her craftes, and on her marchandise shulen trulyche pay her tythe to God and to holy Church. Alsoe Carpenters, and Smithes, and weeveris, and all other crafty men, and all other hired men and wimen shulen Tythen of all they getten but if they wulle giue any certayne thereof to holy Church at the Persons or Vicaryes will. Alsoe of sowles, of Calues, of Piggs, of Gees, of Hennes, of Flare, of Hempte, of Cozne and of all thing that neweth by the yeare. Alsoe of hydding of Trees, and of all manner of vnderwood sworing or hewed. Alsoe men of holy Church moune curse by name hem that wolen not pay her Tythes as it is written in many places of the lawe of holy Church.

● At the repeating of these Articles, the Prelate standeth in the Pulpit, in his Albe, the Crosse being lifted up, and the candles lighted. After the Repetition, these or the like formall words of Execration are denounced. *Ex Auctoritate Dei Patris Omnipotentis, beata Maria Virgini, & omnium Sanctorum, excommunicamus, anathematizamus & Diaboli commendamus omnes supradictos malefactores, Excommunicati sunt, anathematizati, & Diaboli commendati; Maledicti sunt in vultu, in campis, in viis, in semitis, & domibus, extra domos, & in omnibus aliis locis, stando, jacendo, surgendo, ambulando, currando, vigilando, dormiendo, comedendo, bibendo, & aliud opus faciendo:* Or as the *Canterbury Booke* saith: But thowso authoritie of our Lord God Almighty, and our Lady S. Mary, and all Saints of Heuen, of all Angels, or Archangels, Patriarchs, and Prophets, Euangelists, Apostles, Martyrs, Confessors and Virgines, also by the power of all holy Church, that our Lord Iesu Christ gaue to S. Peter, we denounce all thoe accursed that wee haue thus reckned to you: and all thoe that maintaine hem in her Ans, or geuen hem hereto either helpe or counsell for that they bee departed from God and all holy Church, and that they haue noe of the passion of our Lord Iesu Christ, ne of noe Sacramentes that bene in holy Church, ne noe part of the prayers among christen folke, but that they be accursed of God and of holy Church fro the soole of their foote vnto the crowne of her head, sleaping and waking, sitting and standing, and in all her words, and in all her workes, and but if they haue grace of God for to amend hem here in this life, for to dwell in the paine of hell for ever withouten end (*Fiat, Fiat*) Doe to the boke, Quench the Candle, Ring the Bell: Amen. Amen.

This Generall Sentence was solemnly thundered out once in every Quarter, that is (as my old Booke saith) the fyrst Sonday of Advent at comyng of our Lord Iesu Christ, the fyrst Sonday of Lenten. The Sondaye in the fesse of the Trynity, and the Sonday within the vtus (octaues) of the blessed Virgyn our Lady S. Mary.

that

that paid his Tythes to pay them to what Priest or Levite him liked, but hee must pay them to the Priest or Levite that dwelt in the place where himselfe made his abode: but

Thus much we
have set downe
concerning the
Generall

Curse, not ho-

pling to fright any man into devotion with this (black Sentence) or to propose such distempered pietie for an example, but that it might bee considered how horrible a crime it was in our Forefathers account to rob the Church in the least particular. And indeed they conceived no more hope of a man that died under this *Damnifum Thes*, than of him that dyed in a mortall sinne, nay much lesse; for the *Cantebury* Booke saith, that many Clerkes preuen at the day of iudgement would our Lady Saint Mary, and Saint John Baptist, and all Saints that bene in heauen kneele downe, at once before the blessed face of Almighty God they shulen not in that tyme rehearse the prayer of them all deliver the Soule of man or woman that dyeth in deadly sinne, &c. And if the day of iudgement shall be so heard to all thoe that dyen in any deadly synne by all reason full myche harder shall it be at that tyme with all thoe that bee founden openly cursed of God and of holy Church, &c.

Thus we see what furies followed this Sacrilege in the opinion of our Forefathers, who were so confident, that a Church-robber could not escape the Judgement of God, that they delivered him over to Satan, or as they say, cursed him with the *Spoze*, and with the *Beile Curse*, with Bell, Booke, and Candle.

The Clergie of the present time gives better language than thus ; what cause they
 may have, I will not say : It may be accounted for wildome, that their injuries cannot
 bee judged by their clamours, yet the Ages to come must not say, that these things were
 done *Nobis dormientibus*. The experience of the Emperours *Charles the Great*, and *Lewis*
 the Godly would be noied to this purpose out of their *Capitulars*: *Novimus* (say they) *multa*
Regna & Reges eorum propterea occidisse, quia Ecclesijs spolia verunt, &q3; eorum iustitia-
rum, abstulerunt, alienaverunt, vel dissiparunt *Episcopis* *quæ & Sacerdotibus, atq3; quod ma-*
gis est *Ecclesijs eorum abstulerunt, & pugnantibus dederunt, quapropter nec fines in bello*
 nec in fide stabiles fuerunt, nec victores extiterunt sed terga, multa vulnerata, & plures
interfecti, veterum, regnorumq3; regiem; *& quæd perjuris* *regna caelestia perdidimus,*
atq3; proprias hereditatis carnerunt, & habitum carent. So they in the 7. Book of the *Ca-*
pitulæ. 204. fol. 224. Edit. Paris: 1603. Whereas the *Capitular* attributeth those grand enor-
 mities, & their ill successe to the Kings of that time, it is not now to be so understood. Farre
 be it ever from us to thinke otherwise than divinely of these our most Religious Princes, by
 whose gracious protection the Church hath bin of late so miraculously blessed. As for others
 among us, they may apply this to themselves as they shall be troubled with cause and occa-
 sion. The great Impostor in his *Akoran*, though he cozened all the world besides, yet he
 would not defraud the Church: *De Decimis scribit, fuisse;* *& inde secundum morem con-*
sumtum operare, infamia se subitake semper. So our Robert of Reading translateth : But hee
 that reads *Roberts* Translation, must not always so thinke he reads; he *Akoran*. The Pro-
 phets owne text is, in *ספר שמואל ב' פרק י"ד* *Samarā laarab*, which in our manuscript *Ak-*
orans is the 9. & the 17. in *Roberts* Translation} *וְעָשָׂה לָהֶם כְּעֵשֶׂה לְיִשְׂרָאֵל*
 that is: Give command concerning Tythes, and beware of Clownea: the word *Ty* may
 bee otherwise understood; but if this were not *Mahumet's* meaning, the matter is not great,
 for we have better Prophets to preach this Doctrine. yet

held it lawfull to enrich one Church in this sort, with the lesse it were in impoverishment of an other, but the cause was the hard-

therefore called the Mother-Church. because that as the people in their Mothers wombe were borne Men, so in the Fonts of Baptisme, as in the Churches wombe, they were borne Christians. In succeeding ages, when it was found that the Mother-church was too farre distant from some Villages, and so situated, that in the Winter time the people could not repaire thither, consideration was had of this inconvenience, and the Bishop tooke occasion from hence to transerre the right of Baptisme and Sepulture to the Rurall Churches, and this, together with the right of Tythes, &c. made it a Parochiall Church, of that kinde which wee now have. But because also in many Parishes some Families liv'd so remote from their Church, that they could not conveniently frequent it, it was indulged to those, that they might build themselves either in or neere their mansion-places a private Oratorie, reserving for the most part the right of Baptisme and Sepulture to the Parish Church, which, in respect of these lesser Oratories, was to be accounted their Baptismall and Mother-Church. It was also provided, that these Families, notwithstanding their grant of a private Oratorie, should upon high dayes repaire to their chiefe Church, as it seemeth by the Councell held at *Agatha Can. 21. Tom. 1. Si quis extra parochias in quibus legitimus est, ordinariusque conventus, oratorium in agro habere voluerit, reliquiis festivitatibus ne ibi Missas teneat*: (or as *Gratian* hath it in the Decree, *Audiat*) *propter fatigationem famulæ juxta ordinem permittimus. Paschate vero, Natali Domini, Epiphania, Ascensione Domini, Pentecoste, et Natali S. Iohannis Baptiste; (et si quis maxime dies in festivitatibus habeantur) non nisi in Civitatibus aut Parochiis teneant* (or as *Gratian* hath it) *audiam*. Those private Oratories were afterwards called *Capellæ* Chappels, and those that in them exercised the Ministeriall function were called *Capellani* Chaplaines. But for the reason of the name, see *Baronius* upon the *Roman Martyrologue*, at the 11. of *June*. Or if the Cardinall there satisfie not, see what *Cujacius* hath observed (out of *Hesychius*.) *Ad lib. Decretal. C. Capellanus. De Secundis Nuptiis*.

By that which hath bin said, it may appeare in some sort, what was a Baptismall Church. And it is agreeable to that which *Linwood* hath noted upon the Provinciall Constitution: *Baptisterium, in verb. Baptismal. Eccles. A Baptismall Church (saith he) is, sive Cathedralis, sive Parochialis talis viz. quæ habet populum, nam in Ecclesia collegiata vel conventuali quoniam habet populum non debet esse Baptisterium; Dicitur etiam Ecclesia Baptismalis respectu Capellarum subiectarum, quarum plebis infantes in ea baptizantur, et non in ipsi Capellis immo ad ipsas Ecclesias Baptismales tanquam matrices pro Baptismo recurritur, &c.*

Concerning these Baptismall Churches, the Canon saith, that there can be but *una in eadem terminatio cum suis Capellis*: cap. *Plures* 16. q. 1. And that the Tythes were of right to be paid to these Churches, it is evident by the Decree, where *Anastasin* provideth, that no man under paine of Excommunication should, *Tenere, aut extra Ecclesiam Baptismalem dare decimas et oblationes Ecclesie, quas dare debet populus, C. Statuimus* eod. tit. And *Leo*, *Non tantum nobis, sed etiam Minoribus nostris visum est decimas iusto ordine plebibus tantum ubi Sacrosancta Baptismata dantur, debere dari. C. De Decimis* ibid. Yet notwithstanding all the care that could be taken, the complaint was, *Quidam Laici vel in propriis, vel in beneficiis suis habent Rusticas, et contempta Episcopi dispositione, non ad Ecclesias ubi Baptismum, et predicationem, et manuum impositionem, et alia Christi Sa-*

argumenta acci-
piunt, decimas
suas dant, sed
vel propriis ba-
silicis, vel aliis
Ecclesiis pro li-
bitu suo tribu-
unt. C. In Sa-
cris ibid.

nessie of mens hearts, who scarcely could be won by this
favour to restore that little againe unto the Church, that
their forefathers had in such abundance taken away from
it : and that the Fathers of the said Councell did yeeld
thereunto (although it were an inconvenience thus to doe)
was, for that they did count, although they did admit that
it might bee for the present, yet there might bee a better

What distinction of Churches our owne Ancestours had, and how neare it cometh
to that which hath beene said, wee may observe out of the Decree made at *Winc-
ster*, in the Reigne of King *Cnut*; where it is provided, that those that any wayes
violate the peace of the Church, should receive a proportionable penaltie. Therefore,
saith the Decree *num. 3.* Be te mon æper to þonne *z* gylþbryce into þær cýn-
can be þam þe reo ðære ry 7 be þam þe þære cýncan mæþ ry; Ne rynd
calle cýncan na zeliche mæþe þurhollice reorþe þeah hz godcunollice hab-
ban hālgunge zelice heaþod cýncum zupbþrice iſ æt botryþrum þin-
zum be cýninger munde, þ iſ, mid fip pundum on englalaſe, 7 medem-
þam mynſtpeſ mid 120 ſcill 7 þ iſ be cýninger piſe 7 þonne zyt læ-
ſan ðær lýt el ðeopdom ry 7 legerſtop þer ry mid 60 ſcill 7 7 ſelc-
þice þær legerſtop ne ry mid þurſtazum ſcill : First, let the breaking of
the Church peace bee according to the decde it ſelfe, and according to the dignitie of the
Church. All Churches have not like dignitie in worldly worth, though they have a holy
Consecration alike. *zupbþrice*, or peace-breaking in the head Church, hath the same
punishment, as that of breaking the Kings peace, and that is five pounds by English Law.
In an inferiour Minſter 'tis 120 ſhillings, and that also is the Kings mulct : In lesser
Churches where litle Service is said, and yet there is a burying place 'tis 60 ſhillings: In
field-Churches where there is no burying place, 'tis 30 ſhillings.

How Tythes were to be paid to these Churches, it may be understood by an other De-
cree of the same Parliament, *num. 11.* Giſ hpa þonne þegen ry þe on hys bo-
clande cýncean hæbbe þe legerſtop on ry zerelle þonne þurðan ðæl hy
azene teopunge into hys cýncean; Giſ hpa cýncean hæbbe þe legerſ-
top on ne ry do he of ðam niſon oælum hys pſceorſe þ þ he pille 7 7
elc cýncſceat into þa ealðan mynſtpe be ælcan fpiſgean heorþe (of
teorþe, as it is in the Lawes of *Edgar*, where this Decree also is set downe, *num. 3.*) that
is, If a Thane have a Church in his bocland, to which there belongeth a burying place,
let him give the third part of his owne Tything to that Church: if hee have a Church
without a burying place, let him give of the nine parts to his Priek that which he will, and
let all Cyricſceat goe to the elder Minſter out of all free-hold.

For that which the Law calleth Bocland, see *Lambard* in the Explication of words
premised to his *Archæonomica*, where also hee telleth what a Thane is.

time found out after for the reformation thereof, and so sustained the inconvenience for the present upon this reason; that the universall Church of Christ is one body, and every particular Church a part of that body, and so it lesse mattered to what particular Church they were restored, so that they were restored at all: for that by the restitution to one they hoped in time they might with more likelihood come unto the other; for those things wherein there is an Identitie, or like representation of Nature and Condition, as is betweene Church and Church, have an easier passage the one from the other, than those that are of different nature and disposition, as a lay man and a Church.

S E C T. 3.

That out of that violent Prescription, many other Prescriptions arose, but of lesse moment.

OUt of the ruines of this violent and presumptuous prescription, which have now obtained strength of a Statute in the world have issued out sundry petty Prescriptions, which also are confirmed by law and custome, as the other were; as the Prescription wherein one Church prescribeth Tythes against an other Church, the Law punishing therein the negligence of the one and rewardeth the vigilancie of the other: Prescriptions, wherein one Ecclesiasticall body corporate or politique, prescribeth Tythes or other Ecclesiasticall duties against the Parson or Vicar of the Parish, and the Parson and Vicar againe against them: A Prescription whereby a Lay man, having no right to prescribe Tythes (because hee can in no right possesse Tythes, and prescription cannot proceede without possession) doth notwithstanding by pernancie, or giving some part of his ground or pension in money in lieu thereof, prescribe a discharge thereof: A prescription wherein a Lay man doth prescribe the manner of Tything, which albeit by the Common Law is counted to be good by paying a thing never so

Regul. sine possessione de regulis juris in 6.

*Limmod. Pro-
vin, quoniam
verbo unifor-
mis in Glo. de
decim.*

*Eod verbo con-
suetudines.*

*Cap. à nobis de
Decimis in
Glos.*

small in lieu thereof, yet neither by the Canon Law, nei-
ther by the Law of God it selfe, could it ever be lesse than
the just tenth it selfe; so that the manner of Tything with
them is not understood in that sence, as the Common Law-
yers doe take it, by paying any thing whatsoever in place
of the just tenth, but their intendment hereby is, that no
countrie can bee bound to an uniformitie of payment
of Tythes to bee used every where: but every man is
to pay Tythes according to the manner of the Countrie
where hee dwels, that is, that one payes his Tythe-come,
and bindes up the same in sheaves, an other leaves it scatte-
red in the furrowes, an other tythes it in Cocks or Pookes;
and this is it that they meane, that there cannot be an uni-
formitie of Tything prescribed to every man, after which
he is of necessitie to set out his Tythe, but that he may pre-
scribe some other manner of Tything against the Parson or
Vicar: but against that uniformitie that the whole Tythe
should not be paid, was never any prescription allowed a-
mong them, for they evermore have beene of this minde,
contrary to that which the Schoolemen hold, that Tythes
are part of the Morall Law, and not of the Iudiciall or Cere-
moniall Law; and that in the Precept of Tythes, there is a
double consideration, one of the honour of God, whereby
he retained tythes unto himselfe, in signe of his universall
Lordship over the whole world, which is irremissable; the
other of the profit or utilitie of man, in that it concernes the
provision of the Minister in all ages, which is undispenfable.

S E C T. 4.

*That Ecclesiasticall Judges admit pleas in discharge of tythes,
and the manner of tything, contrarie to the conceit that is
had of them.*

ANd yet, notwithstanding all this, the Ecclesiasticall
Judge admitteth all kinds of prescriptions before-na-
med, and according to the proofes thereon brought, giveth
sentence either to absolution or condemnation: albeit the
Reverent

Reverent Judges of the Land, upon an erroneous report made in the eight yeare of *Edward* the fourth, have a conceit to the contrarie, viz. That no Ecclesiasticall Judge will admit any Plea in discharge of Tythe, or the manner of Tything, as it is in their sense taken; and therefore they hold whatsoever the Defendant doth alledge in his suite for a consultation, and namely that the Ecclesiasticall Judge did allow of the Plaintifes Plea and allegation, and did admit him to the proofes thereon without deniall, are idle speeches, & rather words of course than of effect and substance. And therefore notwithstanding, whatsoever is alledged by the Defendant, as concerning the Ecclesiasticall Judges well acceptance thereof, it is counted nothing materiall by the Temporall Judges, for that they have a prejudicate opinion of the Ecclesiasticall Judge in these cases, and therefore howsoever the refusal be, or be not, they grant out their Prohibition in these cases. And yet if the Judges Ecclesiasticall proceedings might be seene, and vouchsafed to be read before them, it would bee plaine, there was no such cause of their hard opinion against them; for every where they doe allow such and like allegations. And if perhaps one inferior Judge should make refusall as they pretend, yet could it not bee reformed by an other in an ordinarie course of appeale, but that there must needs be brought a Prohibition out of the Common Law to redresse the same? unlesse happily they can shew, it is a generall conspiracie in the Ecclesiasticall Judges, or a Maxime in their learning, that they will not or cannot admit any Plea of discharge in this case, which they can never doe. And therefore, they are to be intreated to change their opinion in this point, and not doe the Ecclesiasticall Judges that wrong, as to charge them with such an imputation, whereof their whole practice is witnesse to the contrarie: for it is unworthy such mens gravitie as theirs is, who propound unto themselves the inquirie of the truth in all matters, thus to be misconceived and masked in an error, and that for so many yeares, and not to be willing to heare the contrarie, which is an obstinacie in policie

no lesse obdurate, than the Papists is in Religion, who see the truth and will not beleeeve it. And so farre as concerning Prescriptions and the first cause and beginning thereof.

CHAP. IV.

SECT. I.

Of Priviledges and how they came in; and that by reason of the frequency of Priviledges, Statutes of Mortmaine came in.

Now it followeth, that I speak of Priviledges, which are immunities granted unto private men beside the Law.

Of these, some are very ancient, such as true zeale toward the Church bred, and the just admiration of the holy men of God for their sanctimonie of life, their great knowledge in the word of God, their great patience in persecution for Christ and his Gospel, the vigilancie and care they had in their Office, stirred up both in Prince and People. So *Constantine* the great, being ravished with the love of Religion, and the good opinion hee had of the Ministers of his time, erected Churches, and endowed them with large possessions, and granted them sundry immunities, whereby they might more securely intend to the preaching of the word of God, and the winning of soules to the Christian congregation, wherein they laboured with all their might and power, God still adding to the number of the Elect. Neither did hee this alone in his owne person, but hee also gave leave to all other of his Subjects that would doe the like: whereupon the Church was so enriched within a short time, that as *Moses* in the building of the Arke, was faine to make a Proclamation, that no man should bring in more towards the building thereof, the people bringing in continually such great abundance of all things necessarie towards the furnishing thereof, as that there was enough and much

*L. x. c. de sacros.
Ecclesiis §. Si
quis authent. de
Ecclesia.*

to spare: So also *Theodosius* the thirteenth Emperour after *Constantine* (although otherwise a most loving and favourable Prince towards the Church) was faine to make a Law of Amortisation or Mortmaine, to moderate the peoples bountie towards the Church; as did also many wise Princes in other Nations upon like occasion, and in imitation of this Act of *Theodosius*, many yeares after; and among the rest, divers Princes of this Land did the like, upon the dotage of the people towards the Religious Parsons, and specially towards the foure Orders of Friers that were then newly sprung up in the world. But yet this Act of *Theodosius* was done with the great dislike of these blessed men *Jerome* and *Ambrose*, who lived in those dayes; for that *Jerome* thus complayneth to *Neposian* of that Law: *I am ashamed to say it, the Priests of Idols, Stage-players, Coach-men, and common Harlots, are made capable of Inheritance, and receive Ecclesiasties, onely Ministers of the Gospel, and Monkes are barred by Law thus to doe; and that not by Persecuters, but by Christian Princes; neither doe I complaine of the Law, but I am sorie wee have deserved to have such a Law made against us:* In like manner, and upon the same occasion doth *Ambrose* deplore the state of the Clergie in his 31. Epistle: *Wee count it (saith hee) no injurie, in that it is a losse, wee are not grieved that all sorts of men are made capable of Wills, none excepted, how base, prophane, or lavish of his life or honestie soever bee be, but I am sorie that the Clergie men onely of all sorts of people, are barr'd the benefit of the Law that is common to all; who notwithstanding, onely pray for all, and doe the common celebration of the Service for all: So farre they.*

† And yet whosoever lookes into this constitution, where-by it was forbidden, that any man should passe any Lands or other unmoveable possession unto the Church, without the

cause conceived of the ancient *Allies* and *Frieries*, yet it must not bee beleevd, but that these Religious-houses in the old and true intent, were purposed onely for pietie, and for such a practise thereof which the soule might freely enjoy, while it was so set at libertie from the inquietude and avocations of the over-active world. Therefore some of the most grave and learned Fathers of the Church retired themselves to this divine and peacefull

Princes.

Magna Charta.
cap. 56. W. 2. c.
31. an. 13. Ed. 1.

Concerning
this, see what
Peckius saith in
his Booke *De*
Amortizatione
Honorum, c. 6.

† Notwith-
standing the ill
opinion which
in these dayes
is not without

Solitude, and
the profitable
and profound
writings which

Princes leave (for that thereby the things that are so pal-
sed, come, as it were, into a dead hand, which holdeth sure-
ly fast that which it once apprehendeth, neither easily par-

yet remaine, sufficiently testifie how well the Monkes of old could spend their times. What
strict devotion and unblameable carriage the ancient Princes of this Land have expected
from their holy men of this kinde, may be understood by the Law made in the dayes of
King *Cnut*, *Num. 6.* 7 *pe pillap þ̅ ælces habet men georne gebuzan ælc to*
þam nuht þe him to gebýrge ; 7 hupubinga zodas þeopas biſcopas 7
abbodas munecas 7 mýnecena canonicas 7 nunnan to nuhtes gebuzan
7 negollice libban ; 7 dæges 7 nuhtes of 7 zelome clipianne to cuntes ;
7 eor eal cunten folc pingian georne ; 7 ealle zoder þeopas pe biððas
7 laſas 7 hupu pinga racendas þ̅ hig zos hupan 7 clænneſſe luſian
7 beorzum heom ſylfum nuht zoder inne 7 mid þone peallendan byrne
ðe pealle on helle ; ful georne hupian þ̅ hig nahton mid nuhte þurh
hamed þing pæſer gemanan ; 7 je þe dæſ zerpican wille 7 clænneſſa
healdan habbe he zoder miltre 7 to wunulo wunhſcipe ry he þegē lage
pyrþe ; that is: And wee will, that every man of every degree, doe earnestly follow
that Right which to him belongeth, especially Gods Ministers, the Bishops. Abbots,
Monkes, Votaries, Canons and Nunnes, that they take a right course, and live according
to Rule, that they call to Christ night and day, much and oft ; and that they doe it earnest-
ly for all Christen folke. And wee command and teach all Gods Ministers, especially
Priests, that they hearken to God, and love Chastitie, that they may deliver themselves
from Gods ire, and from the tormenting flames that burne in hell. Full truly they wit,
that it is against the Right to medle with women for lusts sake. And those that will ab-
staine from these things and cleannesse hold, they shall have Gods mercie, and in worldly
worship, they shall have equall Right with a Noble man.

It seemeth also by an *Arabick* Canon of the first *Nicene* Councell, what great strict-
nesse and severitie of life was required of these holy Orders ; for the Canon saith, that
they might not carrie about them — מנעם אלסכאכין כנא יעמלן ארדין תחדגין
אף אלגרב ואלקחאל &c. ולא יעלקיא פי חוסאטתם כיסא &c. ולא יחתמן
וחתם ארדהב ואלפצה &c. איצא ולא יסעון פי ארטק ואלחסלק סעין
בעיר וקאר : a paire of knives, as if they were qurelling fellows going out to fight and :
kill, &c. That they might not hang a purse at their girdle, &c. And that they might not seale
a letter with a golden or silver Seale, &c. And moreover that they might not walke in the
Streets or Allyes, but in a most grave and sober manner, &c. as it is set downe in
ארתמאן אלקחאן, the 80. Canon of the fore-named *Arabick* Councell, according
to the Manuscript Copie.

The great estimation that was had of these holy Men, enforced such an immoderate chari-
tie in devout minds, that they obtained most especiall Priviledges & Exemptions, and no
man thought any thing too good or too much to bestow upon a Monasterie. But two great
inconveniencies followed upon the confluence of these large and ample endowments, one
rech

ted with it, so that it cannot without much difficulty be reduced and brought again to the commerce and common use of men) shall finde it was rather for the benefit of the Com-

was the luxuriant demeanour of these Religious Or-

ders, degenerating from their old sanctimonie. This is noted and provided against by the Novell of *Nicephorus*, about the yeare 963. Ἀπὸ τῆς βλάβης τῆς ἐκ τῆς μοναστείας, καὶ τῆς ἐκ τῶν ταύτων σπερμῆς ἀφελανῆ νόσον (νόσον γὰρ ἐστὶν τὴν ἀπ᾽ αἰτίας ταύτων καλῶ) ἐκ διδῆ τινα δι τῶ κακῆ διεσπείαν ἐπινοήσω, ἢ πῶς καλᾶσι τῶ ἀμνηστία : τίσι γὰρ περδόμενοι εἰς πατέρων, ἢ πῶς λαβόντες τὰς ἀφορμὰς, πρὸς ποσὺν τῶν ἀετρίων, καὶ μανίας ἰατρῆς (καὶ τὸν Θεὸν οὐκ ἀγαπᾶν Δαβὶδ) ἐξήχησαν : γῆς πλῆθος, μνηστία, φιλοτίμια, οὐκοδομῆς, ἱππῶν ἀγέλας, βοῶν, κρημνῶν, ἀλλων κτηνῶν ἀετοῦ κρημνῶν, ὅσοι εἶρα καὶ αὐτῶν ἀποδύζοντες, καὶ τῶν ὁλῶν μετέμναν τὸ ψυχῆς ἀπὸ αὐτῶν ἀπατρίοντες, ὥς κατ' ἐλπίδα τοῦ κόσμου βίβη, καὶ πολλὰς φεγγαῖαν τῶν πρὸς τοῖς, τὰ μὲν ἀλλὰ ταῦτα διαφύγειν : that is, But now perceiving among the Monasteries and Religious Houses, a notable disease, (for so I call their unfatiable desire) I finde not which way I may provide a cure for this maladie, or how to punish their excessse, For what Fathers could persuade them, or from whence could they take occasion so superstitiously to abound, or (to say with holy *David*) to bee so vainly madde? Their care is every houre to purchase to themselves Lands without number, sumptuous and stately Buildings, troupes of Horses, droves of Oxen and Camels and other Cattel innumerable, and bending all the solicitude of their mindes this way, they make a monasticall life little different from that of the world, which is incumberd with varietie of anxious care. For these, and the like Reasons, the Novell forbids to build any more Monasteries, but this was afterwards repealed by the *Junior Basil.*

An other great inconvenience would have beene, the impoverishing of Secular States by Amortization of Lands, which Princes foreseeing, were bound to these exorbitant Donations, restraining the excessse of that Charitie, by mature and timely Decrees. In *Spaine* the Lawes of Mortmaine began under the Kings of *Aragon*; in *France*, *nihil usitatum*, as one saith: Thelike provision hath beene made here or there for which see the Statute *De Religiosis* in the *Great Charter*, which also hath beene confirmed by the succeeding Princes of this Land: Yet in what cases Lands may be divided in Mortmaine, See the Writ *Ad quod Damnum*, in the *Natura Brevis*.

Concerning the reason of the name, *Polydore Virgil*, speaking of the Confirmation of the former Statute by *Edw.* the first, saith thus, *Et Legem hanc ad Manum mortuam vocant, quod dicitur (scilicet) Collegii Sacerdotum, non utique cum sui penderent, sed ut mortui, hoc est, usui aliorum mortalium in perpetuum adempto essent.* That which the Author saith concerning this, is the reason of *peckin*, in his Booke *De Amortizatione bonorum*, Cap. 2. But the notation of the word is otherwise observed out of the Statute, by a great Lawyer: Lands (saith he) were said to come to Dead Hands to the Lords, for that by Alienation in Mortmaine, they lost wholly their Echeats, and in effect their Knight service, for the defence of the Realme, Wards, Marriages, Relfees, and the like, and therefore was called a **Dead Hand**, for that a dead hand yeeldeth no service. It is the observation of *Sir Edward Cooke*, upon Judge *Littleton's* Tenures, under the Title Fee-simple, upon the words [*Car si homme purchase, &c.*]

What ever use there might be of these Lawes of Mortmaine in time past, certaine it is, the present needeth them not; for in these dayes few men are so rash headed, as to give too much to the Church: And that which was heretofore said of those things that were given, that they were in a **Dead Hand**, may now more justly be said of those that are taken away.

mon-wealth, than for the dislike of the Church, that it was so ordered.

For if that course had beene holden on still, the greatest part of the livelihood of the Common-wealth would in short time have come unto the Church, and so Lay-men should not have beene able to have borne the publicke burthens of the Common-wealth; which it concerns Secular Princes to be carefull of, and to foresee, that by overmuch bountie towards the Church, they impoverish not their owne state, and lose the right of Escheats, Primer, seisin, and other Priviledges of the Crown in cases of forfeiture, and specially make bare their Lay-subjects, upon whom a great service of the Common-wealth doth lye. And yet otherwise the beneficiallest state of this Realme unto the Prince is the Clergie, as from whom the King hath a continuall revenue in Tenth, and is deepest in Subsidie, and not the least in all other extraordinarie charges, according to the proportion of their place. And therefore, as the King is to maintaine the one, so he is also to cherish the other, and not to suffer their state in any sort to be diminished, for that all other states are made for the service of the Church, and the Church againe for the benefite of them.

But this was none of those Priviledges that I spake of, for these are more ancient than they, and granted out upon better devotion than the other: but after this the zeale of Religion being almost extinguished in the Christian World, (partly by the great uproares and tumults that were in every Countrey, by the breaking in of one barbarous Nation or other upon them, who pulled downe Churches faster than ever they were built, and made havock both of Priest and people, that professed the name of Christ, partly by the heresies that rose everywhere in the Church in those dayes, which distracted mens minde, and made them waver in the constancie of their Religion) it was revived againe upon this Occasion.

SECT. 2.

Of the beginning of Cloysterd Monkes in the West Church of Christendom, and that the Author thereof was one Benedict a Roman about the year 600.

ONE *Benedict*, who otherwise had beene a man of action in the Common-wealth, (that *Benedict* which was, as it were the Father

Father of all those that professed a Regular life, within the West
 part of Christendome; for before his time the Monkes of the
 West Church, served God freely abroad, without being shut up in
 a Cloyster) he, I say, finding himselfe wearied with the tumults &
 troyles which happened under the government of *Justinian*, and
 some yeares after by the incurssion of those barbarous Nations (be-
 fore named) into *Italy*, retired himselfe into a desert and solitary
 place, intending there to give himselfe wholly to the service of
 God: where, when he had a while remained, he grew so famous
 by his Christian exercises of fasting and prayer, and the good and
 wholesome exhortations that he made to those who resorted unto
 him, that within a very little time after, there was great conflu-
 ence of people unto him, not onely from divers parts of *Italy*, but
 even from sundry other parts of the World; so that within a short
 time they grew into Fraternitie underneath him, to whom he gave
 rules to live by, to the imitation of that, which *Saint Basil* did in
 the East Church: to which his Disciples submitted themselves
 with all alacritie, leading a life farre different from the common
 sort of men, denying unto themselves all those ordinary delights
 that other men doe commonly take, out of meat, drinke, appa-
 rell, marriage, Temporall preferment, and such other things
 which worldly and carnall men seeke for very greedily, hum-
 bling themselves onely to God, and the rule of their Master.
 Which thing bred such an admiration of him, and of his Schollers,
 that not only many other Orders sprang out from them within few
 yeares; as the *Premostratenses*, *Cluniacenses*, *Templarians*, *Hospi-
 tallers*, *Cybertians*, and the order of *Saint John of Jerusalem*, but
 even Popes, Princes, and people were wholly carried away with
 the wonderment of them, insomuch as every of them did as it
 were strive, who might shew themselves most kinde unto them;
 wherupon Princes built them houses, every one in his Kingdome,
 as *Clito Etzelbald* King of *Mercia*, built the Monasterie of *Crow-
 land* here in *England*, of blacke Monkes, under the rule of the said
Benedict, in the yeare 716. Popes and Princes granted them pri-
 viledges, so farre as it concerned either of their particulars: the
 Clergie, Nobilitie and People, conferr'd goods and lands upon
 them, every one according to his abilitie.

*Hospi-
 tian
 de origi-
 ne
 Monacha-
 tis.*

That the admiration which these Religious Men did breed of themselves in the head of Princes and Popes, did procure appropriations of Parsonages, and Immunities from Tythes. And that the over-conceit which men had of Prayer above Preaching in the Church, was an adjuvant cause thereunto.

IN this zealous bounty of every degree towards these new sorts of men, there are two undigested Priviledges granted them, both of them so hurtfull and injurious to the Church of God, as never any was the like. The one was the Annexation or Appropriation of presentative Benefices to these Religious Houses: The other, the freeing of such Lands or Hereditaments, as they held in sundry Parishes from the payment of Tythes to the Parsons and Vicars thereof; to both of which the School-mens Divinity gave great advantage, as shall be shewed hereafter.

Either of these had their beginning of one roote, that is to say, of this false ground, that Preaching, which is the most true, and most naturall foode of the Soule, in a Congregation that is come to the profession of Religion already, and knowes but onely the Articles of the Christian Faith, the Lords Prayer, the Ten Commandements, and other Principles and Rudiments of Christian Religion, is nothing so necessary for the Salvation of a mans Soule, as Prayer is: Besides, that Preaching oftentimes gives more cause of Schisme, and dispute in Religion, than it doth of profiting and edifying the Soule: and therefore it was not permitted by the Provinciaall Constitutions of this Realme, that Parsons or Vicars of Churches, should expound or preach any other matter or doctrine, than the Lords Prayer, the Ten Commandements, the two Precepts of the Gospel, that is, the love of God, and the love of a mans Neighbour, the sixe workes of Mercy, the seven principall Vertues, the seven Sacraments, (for so many then the Romish Church held) the seven deadly Sinnes, with their progeny; and this to be done vulgarly and plainly, *Abque cuiuslibet subtilitate, et extera fantastica*, (for so they call learned and orderly Preaching;) whereas notwithstanding Prayer is evermore profitable, every where necessary, and never dangerous: Furthermore, Preaching onely profiteth those that be present, and doe heare it, and attend upon it; but Prayer is avaleable even to those that be farre distant, yea though they be in the remotest place of the world. By which,

*Linwood
provin. eis-
dem, de of-
fic. Archi-
diaconi, c.
cap. Ignor-
antia Sa-
cerdotum,
de officio
Archipres-
byters.*

and other like arguments, they translated away that maintenance that was provided for the home Pastors, (who by Gods owne institution, were to watch over their Soules) to forreine and strange Guides, who never communicated to their necessitie in any heavenly comfort, but onely tooke the milke of the flock, and fed themselves withall. But by this pretence of theirs, ought not Preaching to have beene disgraced; for albeit Prayer bee a necessarie piece of Gods service, and so necessary, that the Soule of man is, as it were, dead without it, yet is it not † equall to the dignitie of Preaching, which God hath ordained to bee the onely meanes to come to Salvation by: For Faith comes by hearing, and hearing by the word of God; and without Faith it is impossible to be saved: for Faith is a gift that purifies the heart, and makes a mans prayers acceptable to God; and therefore neither of them ought so to take place, as that the one should shoulder out the other, but they ought so to goe hand in hand together, as that one should helpe, assist, and countenance the other.

unchristian. This reason prevailed for all places in the first times, but in these last Indies no otherwise than by our Prayers. Yet even in those primitive times, which had most cause to call for Preaching, we shall find, that this duty was of rarer exercise, & lesse solemnity than that of Prayer, as it may abundantly be discovered out of the Liturgies of both the Churches. And it is observable, that where Preaching hath beene of the greatest account, it hath bin so much beholden to Prayer, that it was not onely begun and ended, but also discontinued by devotion: For wee shall finde the Reverend Fathers *Chrysostome* and *Basil* of *Seleucia* at prayers in the middle of a Sermon: See the one in his 39. *Orat.* the other in his 3. *Hom.* Περὶ Ἀκταλῆτης, &c. *Moses* the Sonne of *Maimon*, that profound Doctor of the *sewes*, instituting a comparison betwixt their Sacrifices, and the more substantiall Services required, in stead of all other, nameth that of Prayer and Invocation, and of these hee saith, that they are — &c. וְיָתֵר קְרִיבֹת אֵל הַכִּינָה הָרִאשִׁינָה nearer to (Gods) first intention, and that our way thereunto, is by them: & afterwards he saith that these are necessarie — כָּכָא זְמַן כָּכָא זְמַן כָּכָא זְמַן &c. בכל מקום ובכל שׁוּרְמָן at all times, in all places, and for every place. See his *More Newuch*, *Helec.* 3. C. 3. 2. p. 117. And holy *Antioch* in his 106 *Hom.* which is ἐπεὶ ἐνδοξιάς, saith of Prayer (ὅτι) ὑπολαμπέει πνεύματι πάντων ὧν ἀρετῶν, that it is of a more sublime Condition than any other vertue. And how our Lord himself stood affected to this, wee may acknowledge by that, where hee calleth the Church, his *House of Prayer*, not *Preaching*; which word so well in the elder times, that all their Temples were known by the name of *Εκκλησία*, *Ora-* *tories*. Nay the Preacher himselfe, *prov.* 15. is so confident of a just mans Prayer, that he dares say that God will even be obedient to it (for so ἐπακούει or ὑπακούει is rendred by the Interpreter of the forenamed *Antioch*.) However. It may seeme to be so, for when all the Preaching of *Lot* could prevaille no otherwise, than to bring vexation to his righteous Soule, the Prayers of *Abraham* might have saved *Sodom*, if among so many thousands, there had beene but ten just men.

All this while wee would not detract anything from Preaching, but considering our selves to live under a State so maturely compos'd, and so thoroughly advis'd and seduced in the Faith, it will be expected, that we should so farre moderate our opinion of Preaching, as that our magnifying thereof, may no way tend to the discredit or disadvantage of most necessarie Prayer.

† But here it will neede, that the Reader use a sober judgement; for it cannot but bee thought unequal, that Prayer and Preaching should bee so unwarily plac'd in competition, as that Prayer should lose by the comparison. There may bee alwayes neede of Preaching, but then most of all, when the Auditorie is

only for some,

Whether Appropriations came first frō Princes or Popes it is questionable.

BUt how these annexations of Benefices first came into the Church whether by the Princes authoritie, or the Popes licence, it is very disputable, and there are reasons on both sides for to shew the same.

For whereas there are reported by *Ingulphus* Abbot of *Crowland* before mentioned to have bene eight Churches, beside the Patronage of some other, annexed and appropriated to the said Abbey, by sundry *Saxon* Kings, it doth not appeare, by ought I can finde, whether they were done by the sovereign authoritie of the Kings alone, to the imputation of that, that was done by *Martellus*, who made all *Christian* Kings to sinne in this point, or that it was done by any other Ecclesiasticall authoritie, for that there is nothing extant for the allowance thereof, save the severall Charters of those ancient Kings only: & that I should bee the rather induced to beleieve that it was done by those Kings authoritie only, I am thereto perswaded, for that I finde *William* the *Conqueror*, immediately upon the great victory that hee got over this Kingdome, to have appropriated three Parish Churches to the Abbey of *Bataile*, which hee built in memory of his Conquest. And whereas *William* his sonne had depopulated and overthrowne sundry Churches in the new Forrest, *Henry* his brother by his Letters Patents gave the Tythe therof to the Cathedrall Church of *Salum*, & annexed thereto twenty other Churches in one day; if the copie of that record that I have seene, as concerning these appropriations, be true, yea the matter was gone so farre in those daies, that even Noble persons and other meaner men, would command Corodies and pensions to their Chaplaines, & other servants, out of Churches, and this could not be redressed, untill such time as there was made a Statute to reforme it.

On the contrary side, that I should take it to be a devise of the Pope, I am moved thereto, for that I finde every of these orders of Religious men were confirmed by one Pope or other; & as they confirmed them, so it is like they made provision for them, & that most especially this way, & that chiefly after the Laws of Amortisation were devised, & put in ure by Princes: & thereupon it is that we finde sundry sorts of annexation made by Popes & Bishops under them, every one in their Diocess: as some were made so far as concerned the Patronage only, & then had the Monks therein presentatiō only: some other were made *pleno jure*, & then might the Monkes both institute & destitute therein

without

Anno 1.
Edw. 3. c.
10.

*Linwood c.
licet bona
memoria.
Gloss. in
verb. affe-
runt non
ligari, de
locato &
condict.*

were of their owne foundation, they might chuse, the Incumbent being once dead, whether they would put any other therein, unless perhaps the same Church had people belonging unto it, for then must they of necessity still maintaine a Curate there; & of this sort were their Granges, & Pories, & those which at this day we call Donatives: but if it were of another mans foundation, then was it otherwise. To this also I adde, that the Pope every where in his Decretals, arrogateth this right unto himselfe, as a Prerogative of the Apostolike See, to grant these priviledges to Religious orders, to take and receive Benefices at Lay mens hands, by the mediation of the † Diocesan, whose office it was to be a meane

† By occasion of that which the Author here saith, and that which hee hath hereafter said concerning

ning the Patrons pension from the Bishop, Chap. 5. Sect. 1. of this 3. Part. It shall be here enquired, what Right and Title the Diocesan had to a new Church, or Monasterie, and how it stood in comparison of the Patron; and because this Right seemeth originally to discover itselfe in the Founding, Erecting, and Endowment of a Church or Monasterie, (by all or either of which, the Law saith a Patron may be made, the Bishops consent alwaies presupposed, as hereafter shall appeare) therefore in the first place it must be considered, how farre forth the Bishop was concern'd in these, that it may the better be understood, how truly hee was qualified to the Right of Presentation. For that which concernes Foundation and Erection. All that the Patron had free to himselfe in the first place, was but his Thought, he might thinke where he would designe the Ground, or How he might Build the Church; and if he entertained his owne Motion, hee might make it his purpose. But this was nothing without Execution; and to this the Diocesan was to bee required, as the most principall and most effectuall Agent; therefore it is said in the 4. Canon of the Councell of Chalcedon, that no man shall erect μοναστήριον ἢ ἐκκλησίαν ὅπου παρὰ γνώμην τῆς τῆς πόλεως ἐπισκοπῆς, a Monasterie or a Church without the Bishops consent. And Lambertine saith, that this was so necessarie, that if a Church were set up in the Patrons ground without his consent, the Patron could not pull it downe without the Bishops consent; yet if the Patron build a Church upon his owne ground without the Bishops consent, the Bishop might pull it downe without the Patrons consent, and yet in this case the Patron might not doe it without the Bishops consent, &c. But to see further. For the Greeke Church, their Euchologue saith, Ἄνθρωποι ἐν τῇ ἐκκλησίᾳ τῇ μέλλοιτι ἀνεγείρειν ναὺν ἢ ἐκκλησίαν ἐκείνην ὁ Ἀρχιεπίσκοπος, &c. That the Materials being provided for the foundation of the Church that shall be erected, the Bishop cometh thither in person, &c. and having put on his Formalities, the Ἐπερχόμενος and the Ὀμολογούμενος, he saith certaine Prayers Εὐλογητὸς ὁ Θεός, &c. Παραχρῆμα, &c. This done Ὁ μὲν Ἀρχιερεὺς θυμῷ τὰς θυμολύβας κυκλῶν διὰ ψάλλοντες λόγους τὸ Ἀπολυτίκιον τὸ ἅγιον εἰς τὸ ὄνομα τοῦ Ναυδὸς μέλλει ἀνεγείρειν, καὶ ἕτερα προπύλαια διὰ βέλονται ὁ ἀναγινώσκων, &c. i. the Bishop furneth the Ground worke with his incense circularly, then the Singing men say the Ἀπολυτίκιον [a kinde of Collect] for the Saint to whose name the Church is dedicated, and some other Services as the Chapter shall appoint. That which followeth in the Euchologue concerning the Corner-stone, which the Bishop crosseth, and layeth for the foundation, hath beene formerly observed; by occasion of the Emperours Novell to this purpose.

be-

Where we
speake of
the B ha-
bite, wee
have safe-
ly retained
the words

betweene the Religious house and the Incumbent, for in indif-
ferent rate, that neither of them should presse too much the one up-
on the other: and therefore in the beginning, the usuall rate that
they set downe betweene the beneficed man, and the Religious
person was the one halfe of the Benefice; for that it was not

of the Euchologue, *Επταρχιον & Ωμοφόριον*, for that wee finde them confusedly and un-
certainly rendred, the latter may in port *Humeralis*, the former seemeth literally to bee as
much as *Collare*; but *Gretser* was very angry with *Junius* for translating it so, (in his
Notes upon a fragment of *Cypriolase*) *Quasi de Canibus sermo esset*, as if (saith the Jesuite)
Master *Toung* had bene talking of Dogges. But see what the Jesuite himselfe saith to the
words *Επταρχιον & Ωμοφόριον* in his Comment, upon *Codm. cap. 16.*

To returne to our Dioc. f. n. The Right and Title to a Church, and that which belongeth
therunto, is more peculiarly acknowledged by the *συναγωγίον*, or setting up of the Crosse, the
performance whereof was in this manner: *Αναφέρεται τῷ Πατριάρχῃ ἀπὲς τῆς οἰκοδομῆς
τῆς Ναὸς ἢ γίνεται γράμμα πρεσβεπτικὸν ἢ ἀπὸς τὸν Ἐξαρχὸν αὐτοῦ, ἢ ἀπὸς τινὰ ἢ Ἀρχι-
ερέων ἐπιδικαιωθῆναι, καὶ κατασκευάσθαι καὶ τὸν Ναὸν τελεσθῆναι ἐπὶ Συναγωγίῳ Πατριαρ-
χικῷ, καὶ δώσει δὲ γινώσκει καὶ συναρὸν ἑλκινὸν ἐν ᾧ γράφουσι οἱ Πατριαρχικοὶ γραμματικοὶ ἐν
τῷ ἐνὶ μέρει. Συναγωγίον πατριαρχικὸν ἀρμαδὲν ἐπ' οὐνόματι τοῦ Ἀγίου τῆς δε, ἐν τῇ δεσποσύνῃ
παύει τῆς δε, ἐν τῷ Ἐπαρχίᾳ τῆς δε, ἐν τῷ ἰδίῳ δεληματι. παρὰ τοῦ ἀγιοτάτου καὶ οἰκουμενικοῦ
πατριαρχικοῦ τῆς δε. Ἐν τῷ ἑτέρῳ μέρει. Ἐπὶ τῆς βασιλείας τοῦ ἐκτισθέντος βασιλέως καὶ
πᾶσι τοῖς ἡγεταῖς τῶν δε, καὶ ἐν τῇ τοῦ δε. Καὶ πέμπεται ὁ συναρὸς ἐν ᾧ ὁ ναὸς μέλλει οἰκοδομηθῆναι.
Ἢτοι ὁ πρεσβεπτικὸς ποιεῖ καὶ ἀναδὲν ἀκολουθίαν αὐτοῦ τῷ δευτικῷ ὅταν ᾖ ποιεῖν καὶ ἰσχυ-
ράσθαι πρυγνισοὶ καὶ τὸν συναρὸν ὅταν ᾖ ἀγίας τεραπλῆς πρεσβεπτικὸν καὶ τινες ἀναρ-
χοὶ οἰκοδομῆματ' ἁλκκον ἔχοντ' ἢ διὰ λίθων, ἢ διὰ σιδήρου, ἢ διὰ χαλκοῦ, ὡς ὁρίζεται ἐν τῇ
μεγάλῃ Ἐκκλησίᾳ, &c. *Euchol. r. ma* : i. Word being brought to the Patriarch concerning the
Church that is to bee built, Letters are directed either to the Exarch, or to some of the Bi-
shops to request that the Church may be founded, consecrated, and entituled to the Patriarches
Συναγωγίον: then commandement is given that a crosse of wood be provided, upon which
the Patriarches Secretaries must set down, upon the one side *The Patriarchs Συναγωγίον*, con-
secrated in the name of such a Saint, in such a Citie, preserv'd by God in such a Province, of
proper will by such or such the most holy and Oecumenicall Patriarch. On the other side, *dur-
ing the Reigne of such and such our most Religious Princes, in such a Moneth, of such a year.*
Then the Crucifixe must be sent to the place where the Church is to be erected, and there [the
Bishop] by whom it is conveyed saith the forenamed Service, which is used at the founding
of a Church; and when hee maketh the Consecration, the Crosse must be set up behinde
the holy Altar, there being prepared for it some lofty structure, fitted with a concavity (to re-
ceive it) either of Stone, Iron, or Brasse as it may be seene in the great Church, By the great
Church, understand that of *S. Sophia* in *Constantinople*. Thus the Euchologue, for the
Greece Church. The like to this (for as much as concerneth the substance) is observed in the
Latine, but the Ceremonies, there are more tedious and elaborate. The Reader that hath so
much time and patience shall finde this true in their Pontificall.*

By the setting up of the *Συναγωγίον*, the right of the new Church was conveyed to the
Patriarch, or Bishop as by an especiall title: so that now, for the most part, things were alowe

thought

thought that the Pope would charge a Church above that rate. But after by the covetousnesse of Monkes and Friers themselves, and the remifnesse of Bishops who had the managing of this businesse under the Apostolique See, the Incumbents part came to so small a portion, that *Urban* the fifth, by *Osebon* his Legate here in England, in the yeare of Salvation 1262. was faine to make a *Legatine*, whereby he forbad all Bishops of this Land to appro-

ther disposed by, but nothing at all without the Bishops jurisdiction. And wee alwayes

think, The Bishop, for though the Patriarch be especially named in the Eucharistie, & it be also controverted betweene them concerning this Title, as it is taught by *Balsamon* upon the 31. of the Apostles Canons, yet that the Bishop, if not onely, yet also had this right, it is evident by the Emperours Novell. And concerning the conveyance of this Right by the *Travellers*, see what is set downe by the Patriarch of *Constantinople* in the case of *Iohn* Bishop of *Apante*; and for this see the *Ius Græco-Romanum*. Tom. 1. Lib. 3. Sem. Synod. 1 p. 222. 233. Edit. *Francfurt*, Ann. 1596. See also that of *Mannuel*, de jur. Patronat. p. 242. And that the Patriarch or Bishop should challenge this jurisdiction over the new Church it seemeth most reasonable. For what did the Lay Patron do more than a man of Israel, who brought a Lambe to the doore of the Tabernacle, but the Priest made it an Offering and an Attornment: The Patron indeed perhaps might chuse the place, but till the Prelate came and sanctified the ground, it might as well be a *Denne of Theeves* as a house of Prayer. The Patron might bring the stones, but the Bishop laid the foundation; or if the workman put the materials together, & made up a house, the B. made that a Church; till then, nothing was but the breathles body of a Temple, the soule being yet to come from a diviner influence of the Diocesan. Therefore it was, that the privilege of a new Church followed not the building but the consecration of it, as the Condition is worthily observed by the devout & learned K. *Alfred* in his laws C. 5. which is *Be cýncena fýrpe* of the privileges of Churches. The King saith, that if a man pursued by his enemy flie to the Temple þ *hine reofan nihtum nan man ure teo*, no man may take him away for the space of a seven Night. *zif he reofan gnelibban mæge*, &c. if he be able to live for hunger &c. Other and great privileges the King there granteth to the Church: but the Law had this caution *pe re tetaly* *zif hylcne cýncan ðe Birceop zehalgode ðis fýrpe* (This) freedome we give to every (such) Church as shall be hallowed by the Bishop.

We have seene upon what just and valuable considerations the Diocesan might challenge Right and Title to the New Church by foundation and erection. In the pursuite hereof wee may to set downe manifest encouragements to argue the use and exercise thereof, in the endowment and filling of a Church or Monasterie. Therefore if wee looke backwards we shall finde it a Custome well nigh from all Antiquitie, that the goods and revenues of Churches have bene alwayes acknowledged to belong of Right to the Bishops disposing. Some authority for this may be had out of those Canons which are called the Apostles; Canon 37. *ἐπιτομή των ἐκκλησιαστικῶν πραγμάτων ἡ ἐπισκοπή ἐχέτω τὴν προσηνέα καὶ διοικητικὴν αὐτῆς οὐκ ἑσθλῶν*. Let the B. have in his power all the goods of the Church, and let him dispose of them as in the sight of God. So the 40. Canon *Προσηνέως* &c. Where also the reason is given *οὐ γὰρ ταῖς ψυαῖς τῶν ἀνθρώπων ψυχὰς αὐτῶν πνεύτεον, πολλὰ ἂν ἦοι μᾶλλον, ὅτι καὶ τῶν πραγμάτων ἐνταλασσεται*. For if the pretious soules of men are committed to his care, how

much more ought hee to bee intrusted with the Church revenues. For the authoritie of these Canons, it may now be thought too late, and to little purpose to speake: and yet I have alwaies marvelled who that should be, that durst be so bold, as to fasten so many forged precepts upon the Apostles; and much more, that who soever he were, hee could be so fortunate in his fraud, as not to be discovered rather in the next Age, than in those later times, which saw the former at a distance, & may be thought to know but a little of that which was then done. True it is, that some of these Canons may seeme to argue, neither the Spirit, nor Style of that Age, in which they pretend to have bene brought forth: and yet of others we are bound to thinke more soberly. To say no more, we will onely set downe that of the Arabicke Paraphrast, who at the end of his translation of these Canons, in stead of that which the Greeke saith [ταῦτα ἡ σὺν ἁγίων διατάξις ἐστὶν τοῦ κυρίου καὶ ἐπισκόποις, these things we have delivered unto you concerning the Canons, O ye Bishops] saith thus, **אנחנו נתנו לך את כל אלה** [We have given thee all these]

that is, O yee Familie of the faithfull attend: **אנחנו נתנו לך את כל אלה** [We have given thee all these] unto our words and precepts, for that they come from the holy Spirit of the living Lord our Care. But however it be resolved against these Canons, yet that which we have said is also set downe by the Synod at *Antioch Can. 24 & 25.* where Note (saith *Balsamon* upon the 25. Canon) **ἐπὶ δὲ ἐκκλησιαστικῶν ὁφειλόμενα πάντα τὰ ἡμῖν ἐκκλησιῶν διοικεῖν**, that is, Administration of those things which appertaine to the Church, belongeth to Ecclesiastical men. Reade also to the same purpose the 7. & 8. Canons of the Councell held at *Caesarea*. **Εἰ τις κληρονομία ἐκκλησιαστικῆς, &c.** And **Εἰ τις δόσις ἢ λαμβάνει κληρονομία, &c.** which is a Curse ispast upon all those that presume to give or receive the Church fruits, other than by the Bishops dispensation, or theirs who by the Bishop shall be appointed thereunto. And *Steven Bishop of Rome* in the second Centurie, saith, *Laici quoque quatinus religionis nulla tamen de Ecclesiasticis Facultatibus disponendi*, (so yee reade, rather than *Respondendi*) *legitur unquam tributa facultas*, that it cannot appeare, that ever any power was given to Lay-men, though Religious Lay, to dispose of Ecclesiasticall goods. It is the Bishops observation in his second Epistle, and long after him it was repeated in the Councell at *Lateran*, under *Innocent* the 3. *Chap. 44.* In the yeare 589. it was set downe in the *Trullo* Councell, *Can. 9.* that Churches *cum suis Rebus* should *ad Episcopos pertinere*. And *Cyril of Alexandria* in his Epistle to *Dionysius*, saith, hat the Diocesan for the time being, may **συνεῖδεν**, that is (saith *Balsamon*) **ἐν τῇ αὐτῇ ἐκκλησίᾳ διακονεῖν**, that he may confidently and securely be intrusted with the Church Revenues, And because the Bishop had this power over the goods which were conferred upon the Church, it seemeth to be a Reason why hee was sometimes present at the last Will and Testament of Benefactors in this kinde; for this appeareth by the Will which *Bertrake* made, a *Kenish* Gentleman of *Mephism*, related by *Lambert* our of the Antiquities of that place And **pa tyn hyda on djetettune int** **paem mynjette to polcneretede; And ꝑ land æt fealcanhām æftette by** **pa pa dæge into 8. And ꝑe ƿop flēpnice ƿaple, hipe hlaƿonk and hƿ ƿlopn** **ƿpa heona cƿipe ƿæz; And I give** (saith the Testator) **the 10. hides at** **Stroton, to the** **Minster at** **Walkenstede, And the Land at** **Falcham after** **Byhtmaxes** **daȝes to** **S. And** **for** **Ælfrics** **Soule, their Lord and his Elders, so their will was, &c** And this is said to be done

that it might be taken rather to be a worke of charitie, than on compulsion
by enforcement against Law: and that beside with this proviso; Εαυριε δαρε
that if the new proprietaries within sixe moneths next after, ηλξφοian and
Oban Αρεβιρσεορε; &c. and Ελξριε Ρρεορτε; on Cροζδane; i. Winlesse Ead-
gore the Lady, and Odo the Archbishop, &c. and Αλξξιε the Priest of Croyden.

It is this Right which the Diocesan had in the dispensation of Ecclesiasticall goods, it proceedeth
that he was also especially concerned in the Endowment of a Church or Monasterie. For a Monaste-
rie the 17. Can. of the 7. Synod saith thus, Ο ευλομεν Ο κηισου μοναστηριον, ει μη τε περς απερισμιν
εμ καλυδω εδξ. τς Επισκοπυ. *Im. Grac. Rom. in Epist. S. Can. Τυμμ. δ. δεi μοναχ. 10c.* But see
for the Canon as Balsamon and Zonaras have it, and what they say: Be it a Monasterie, or otherwise
a Church or Oratorie, Balsamon saith αναγκηδισται ο κηισου μελλαν προσημαζειν κατὰ δικαιοσυνας
εμ Επισκοπυ, το αρχιν. The Founder shall be forced to bring a competencie according as the Dioc-
esan shall approve. And how much the Bishop was considered in this matter, it appeareth by the 32. Ca-
non of the 4. Council at Toledo, held under Honorius in the year 633. *Novimus tamen conditores*
Basilicarum in rebus quas isdem Ecclesie conferunt, nullam se potestatem habere, sed juxta Canonum
scripta sicut Ecclesiam ita et dotem ejus ad ordinationem Episcopi pertinere. Where it is said, that
the Founder must know that he shall have nothing to doe, neither with the Church, nor that which
he bestoweth upon it, but both shall belong to the Bishops dispensation. And this is also cited by Gra-
tius in the Decree 10. q. 1. cap. *Novimus.*

In the Bracarum Council, held in the year 672. Can. 5. it is set downe, that the Bishop may re-
fuse to consecrate any Church till he be made sure of a convenient Dotation. *Memineris* (saith the Ca-
non to the Bishop) *ut non prius deduces Ecclesiam nisi antea dotem Basilica et obsequium ipsius per dona-*
tionem Chartula confirmatum accipiat, nam non levis est ista temeritas 10c. And before this as much
was said in the 3. Toletan Council of the year 589. Can. 19. which also was reported in 888. in
a Council held at Mentz, C. 4. *Multa contra Canonum constituta, sic Ecclesias quas edificaverunt*
populi conferant, ut dotem quam eidem Ecclesia contulerunt conferant ad Episcopi ordinationem non
pernere. Quod factum et in prateritum displicet, et in futurum prohibetur: sed et omnia secundum
constitutionem antiquam ad Episcopi ordinationem et potestatem pertineant. And in the Council at
Chalon of the year 658. Can. 14. whereas the complaint was, *Quod Oratoria per villas jam longo tem-*
pore constructa, et facultates ibidem cellasque quorum villa sunt Episcopi contradicant: The satis-
faction was, *Hoc convenit emendari ita ut domusque in potestate sunt Episcopi.* Also the Canon *Nullus*
illius 10c. of the Council at Westminster related before in the matter of Parishes is much to this
purpose. There we cite it out of a MS. Biblioth. Bod. which is a continuation of Marianns Scotus. Wee
find also in the Continuation to Florent. Wigorn. by occasion whereof, looking better into our Ma-
nuscript Marian, wee finde, that it agreeth, for the most part, with this Florence of Worcester. But
rather to argue this dispensative Power in the Diocesan, he that is willing to obferve, may finde se-
verall passages both of late and elder times, among the Records of Sarum, a sight whereof I had
the great favour of my worthy Friend, M. Edward Thornewburgh, one of the Canons Resident of
that Church.

We have seene how farre the Diocesan was concern'd in the Erection & Endowment of a Church
or Monasterie, it remaineth, that wee now consider him, in that which appertaineth to the Filling
of a Monasterie, certain it is that none could be admitted, but by the Bishops authoritie. This was
determined in severall Synods, we note onely the forenamed Council held at Nice, because there al-
so the reason of this is set downe, let the Reader see the 14. Canon in the Latin Translation, set
forth by Turrian; for those that are not so satisfied, we shall shortly provide the Arabick Text, if we
be not otherwise prevented by those that are better able, or forced to forbear for want of Character,

As the Bishop was should not let out a competent portion for the Minister, of the to be look't after, fruits of the Benefice, themselves should assigne out a sufficiency by those that

would come into a Religious House, so also by those that would goe out, So it seemeth by the Law of *Alfred*: *Gif hwa Nunnan of mýnrepe út alæde butan cýnmyzer leafe of þe Býsceoper; 7 gerylle hund tpenwiz 7c*: If any leade a Nunne out of a Monasterie without the Kings leave or the Bishops; hee shall pay 120. Shillings.

In the filling of Appropriations, which were made over to the Religious Houses, the Law saith that the Bishop had this power: That he could binde the Proprietaries to let out for the Vicar Incumbent, such a Convenable Portion of the Incomes, as the Bishop in his judgement should be pleased to allot. See *Alexand. 3. to the * Bishop of Worcester. De Præb. l. 7. dig. C. De Monach.*

And there be, that are well enough perswaded, that the B. even now also ought in this Right to be acknowledged, and the ground is, for that it may be likely to stand without injurie to the Statute of Dissolution. For it seemeth by the 27. of *H. 8. c. 28.* that these Lands are to be holden in as large and ample manner, as the Proprietaries did then hold them, or ought to have done. And an other Clause of the same Statute, *Saueith to every Person and Persons, and bodies politique, &c. other than Abbots, &c. all such right, title interest, &c. as they or any of them hath, ought, or might have had, &c.* But the consideration of this, I restore to him from whom I had it. The late learned Civilian in the *Poore Vicars Plea*, where the Reader who desireth more of it, may be further satisfied.

Now it is to be observed, how farre forth the Patron was to depend upon the Bishop, for the filling of any other Church or Oratorie. Most proper to this purpose is the Emperours Novell, which was decreed little lesse then eleven hundred yeares past, about the latter end of the 5. Centurie: *ἡμεῖς οὖν ἱεροκ. κατασκευάσαι καὶ βυλλαιθεῖν ἐν αὐτῷ κληρικῶς ποιεῖσθαι καὶ αὐτὸς ἢ οἱ αὐτῷ κληρικῶς ὡς τὸς δεικνύει; αὐτοὶ τοῖς κληρικῶς χρηρῆσαι καὶ ὡς οἱ ἀνομιᾶσαι. τὸς ἀνομιᾶσαι χειροτονῆσαι, καὶ τὸς παρ' αὐτῶν ἐπιτελεῖν, ὡς ἀναξίως κοινῶσαι οἱ δὲ οἱ κληρῶν. χειροτονῆσαι, πρὸς αὐτῶν ἐπιτελεῖν. m. that is, If any man shall erect an Oratorie, and his desire be to present a Clerke thereunto, by himselfe or his heires: if they furnish the Clerke with a Competencie, and nominate (to the Bishop) such as are worthy, they may be ordain'd: But if those who are intimated by them, be distressed by the Canons, as unworthy of the Ministrie; then let it be the care of the most Reverent Dissolution of the place, to present such as in his discretion he shall conceive better of. That we may the more certainly know, what the Emperours minde is, it must be considered out of *Panormitan*, what is the meaning and originall of the Patrons Right, which by the Canon is called *Ius Patronatus*, and by the Common Law *Advowson*. The Abbots out of the Law saith, that this is *Ius honorificum, in personam et utile ab eis competens in Ecclesiis, pro eo quod Diocesani consensu Ecclesiam fundavit, construxit, vel dasavit, ipse, vel sui à quo causam habuit.* *Abbat Rubric*: He therefore that founded a Church (that is, *fundum dedit*, gave a piece of ground) *De Iur. Pat. c. Nobis*. He also that built a Church upon it 16. 7. c. *Monasterium*. Or lastly, he that endowed the Church built. *C. Pia Mentis ibid.* and therefore qualified with this Right of Patronage. But all this while it is especially to be noted, that all this was done *Consensu Diocesani*, which seemeth to have beene so requisite by that of *Clement 6. c. Nobis, De Iur. Patron. Si quis Ecclesiam cum assensu Diocesani construxit, ex eo Ius Patronatus acquiritur*, that if *Ex eo* should be referr'd to *assensu*, nothing makes a Patron but the Will of the Diocesan. And it is to be understood, that when a man dispendeth of his temporall estate towards the founding, erecting, or endowing of a Church, whatsoever shall be so conferred after consecration, is actually delivered up, and made over to God himselfe: therefore it must needs be, that henceforth these things, cannot properly belong either to the Bishop or the Patron: for the Emperour saith, *Quod Divini juris est, id nullum est in bonis. Infr. de Rerum Divisione. §. Nullum* them*

thereout, according to the quantitie thereof: Which constitution, because it tooke not the effect that was hoped, there were two Sta-

Only the dispensation of those

things must be referr'd to Men: And so that purpose, who of all men could be more fit than the Bishop? It seemeth therefore, that the right of Presentation may be originally in the Diocesan, and wee shall finde it hath beene so, by a certaine passage, recorded in the life of Bishop *Vith*, where the Author saith, That when any would build a Church in his Territorie, the Bishop freely consented both to the Erection and Consecration: *Si consecrati illa consecrata Ecclesia legitimam potatem in terris et mancipis in manum ejus celsitudinis dare non differret, &c.* which is answerable to what was before said concerning the dowie of a Church. It followeth in the Author, *Consecrationemque peracta a dotegne contradita comprobato illic Praebitero altaris Procuratorem commendavit, et Ecclesia Advocatorem firmiter legitimo heredi panno impoſito commendavit:* that the Consecration being ended, and the Endowment delivered up, the care of the Altar was committed to the Priest allowed, and the Advowson firmly conveyed to the lawfull heire, by the putting on of a Robe. *Autho. vita Vd. Irici, C. 7. p. 52. edit. Auguſt. Vindel. 1595.*

It is now time to consider how farre forth the Bishop departed with this Right to the Lay Patron, and for what causes. Wee have said, that the Bishops Right was not to the things themselves, which being once appropriated to God, could be only his, but to the dispensation of them, according to which it was necessarie, that the Bishop should dispose of the presentation, and fill the places with such Inbunibents, as might enjoy them in Gods Right, and execute their function answerably to the Founders good purpose. This Act of the Bishops being (as by them it was accounted) more a matter of Care than Power, was usually understood by the moderate expressions of *Nominare, Praefigere, or Commendare*, still saving the Right to God, and to themselves only such a conscientious disposition thereof, as might redound to his greater glorie: This power the Bishops transferred to the Lay Patron, yet so as it should be necessarie for the Patron to have recourse to the Bishop, that hee might qualifie his Clerke for the Rectorie by ordination, and that it should be lawfull for the Bishop to deſtroy the Patron of this Right according as hee should be moved by such causes as were found to be of a considerable importance: so it seemeth by the Law where the Patrons Right is said to be such a power *in quacumq; Ecclesia hoc usque ſuſtinuit. De jur. Patron. C. Quoniam.* The reason that moved the Diocesan to let the Patron share with him in this prerogative, was for the Patrons encouragement, for so it must be conceived of this right, that it was an honorable privilege: & therefore the Abbot in his definition did well to call it *jus honorificum*. This reason, in respect of the Patron, tooke place, because of the great need which then was of those, which were able, and would be willing to erect or endow a Church, for as much as all places at their beginnings were ever unfurnished, for we shall finde in some that they had no Churches at all, but instead of a Church they were content to lay prayers under a Crosse in the open field: & this is reported of our own Ancestors in the Peregrination of *Wilibald*. *Sic moſeſt Saxonia gentis quod in nonnullis nobilium honoribus habitum praeſentem, non Ecclesiam, sed sancta Crucis signum Domino datum cum magna honore altum in altare ſuorum ad commodam diurna orationis ſedulitatem ſolent habere: Hodoperic, Hieruſolym. 1711. lib. 2. tit. 4. ad Caſum.* Tom. 4. Antiq. Leſſ. par. 2. pag. 426 Edit. Inſol. 1603. In other places there might perhaps be Churches, but sometimes they were no better than those which are spoken of by *Alfred* of Shireburne in the life of *K. Alured*, Churches, of so poore and meane a ſtructure, that when the Candles were ſet before the Reliques they were oftentimes blowne out by the wind which got in, not only per offia Ecclesiarum, but also per frequentes parietum rimulas, as the Author there hath said, in ſomuch that the ingenious Prince was put to the practise of his dexterity, and by occasion of this ſituation ex lignis et bovinis cornibus pulcherrime conſtruxit imperavit: by an apt compoſure of this times in wood, hee taught us the myſtere of making a Lanterne.

These exigencies were the causes which mov'd the Bishops to give all encouragement to the Patron, and admit him into the honorable employments of visiting the Churches, but so as upon occasion given, he might resume this right to himselfe, which upon the abuse thereof hath accordingly followed.

That the Laitie could never yet abide the Clergie, is noted in the Law for an old saying. *De immunitate Eccl. C. Clericis, lib 6.* and Basil the Emperour in the 8. Synod could say of the Lay people of his time: *Ad eo multos malitia in insaniam accendit, etc. ut quod pedes sint minime cogitantes legem potius malum oculis:* that malignitie had so set on fire the madnesse of some, that forgetting themselves to be sheefe, they would needs teach their eies to see. But we are more happy, and need not make this our owne complaint, being no otherwise troubled, than with a very learned and most religious Laitie. But how the Lay Patrons heretofore behaved themselves in the matter in hand, we shall see. (Though I mention only the Lay, yet I excuse not the Clergie Patrons otherwise than thus, that they were but few, and not so likely to wrong the Church in regard of their proper interest.)

The Patrons abused their libertie many waies: if we consult with the severall Councils which have provided against this we shall find them sometimes presenting illiterate and unworthy men, Priests of the lowest of the people: men that can thinke so meanly of the Ministerie, as to make suit to come into the Priests office for a piece of bread, 1. *Sam. 2.* This is noted in the Council at Colen. *An. 1536.* where they are said to present their owne sonnes and kindred *sine ulla delectum aut discrimen sententiam ac atque.* There also it is complained that there were some, *qui ad motu, nomen tantum relinquunt* that promoted the Incumbent only to a bare name, reserving the revenue to themselves, *ausu quodam sacrilegio,* as they are there censured by the Council: and some were so exorbitant in this kinde that they would present their yong boyes and children, as if by the same law of Nature, they could beget Priests and men. *Concil. Palen. Conf. 14.*

This is little better then that of Micha, the man of mount Ephraim; *qui ipse sibi fecit sacrificium:* though this might be well endured that the Sonne should make the Priest, when the Mother & the Founder had made the Gods. But this was done too, when there was no King in Israel and every man did that which was right in his owne eye. *היה זה ככה להעשות זה הפסל* otherwise so abominable an act could never have pass'd as the son of Gersom hath observed upon the place.

The Council of Saltzburgh, under Martin the 5. telleth us of certaine Patrons that used to compound with the Incumbent for a Moyettie of the profits; and this in the German Council under Calixtus is styled *vulnus canonicum et simoniacum.* And see to this purpose the Council of Wormes in 1166. *et. Vi. Presbyteri.* Others not contented with a part of the obventions made the bargain to have halfe for in the second Bracarum Council. C. 6 we finde some that built their Churches, *non pro devotione fidei, sed pro quatuor cupiditate;* not for devotion, but filthy lucre; that they might share alike with the Incumbent in the offerings of the Church.

Sometimes it fell out, that the same Church had severall Patrons, and these in the vacancie, for the most part, disagreed about the Presentee, and this was a great inconvenience, for in the interim during their discord the Bishop was to take away the Reliques and scale up the Church. Some Patrons for their Presentations expected to be gratified with gifts and largesses and the like: and against this was provided in the Nanneten Council. C. 16. And the Council at Arles under Charles the great expressly forbiddeth the Lay Patron, *munera exigere a Præbys. propter commendationem Ecclesia.* See also the Capitul. *Addit. C. 63. et. 30.* of the Council of Mentz. And it was the complaint of the Roman Council, that the Patrons sons and nephewes were wont to exact great dinners of the Bishops, as if they would feed upon the Incumbent, and eat out their presentation. And of these things (say the Fathers of that Synod) *Relatione certa didicimus:* we are credibly informed. *Conf. Palen. 13. Conf. 14.* We find also that the Patron, sometimes for his own profit in the vacancie, would reserve the

the Vicar, there to doe divine service, and informe the people, and to keepe hospitalitie among them.

Albeit most of these Appropriations were principally in Monkes and Fryers, and such other Religious persons, yet were not Bishops Sees, and Cathedrall Churches altogether free from them, as I have before shewed in the Cathedrall Church of *Salisbury*, to whom *Henry* the first appropriated neere twentie Churches in one day: and the See of *Winchester*, which hath had two benefices aunciently annexed to the Bishops table, the Parsonage of *Eastmeane*, and the Parsonage of *Hambleton*. Neither do I doubt, but the like was done in other Bishops Sees, and other Cathedrall Churches, if I had as good instruction to report of them, as I have had information to speake of these.

And so farre as concerning the first effect of Priviledges, whereby sundry fat Benefices have beene injuriously drawne from their owne Churches, and unnaturally appropriated to Monkeries and Frieries, & other secular, & religious places; which as I have said, hath bin partly the act of Lay men, & partly of Ecclesiasticall men.

should have more respect than a Lay-man, but rather the contrarie. C. 31, whereas it is one of the greatest punishments that a Church man can have, to be degraded from his Ministerie, & turned into a Lay-man. But to go on, Some there were among the Patrons that had solide conscience, as to present their Clerke for his mony: this is sharply reprehended in the Councell at *Tours*, c. 15. An. 813, where also it is said to be *vitium late diffusum*: a corruption spread farre and wide. Some others there were so wretchlesse as to rob the Church, after the Rectors decease, of her dowrie: *rebus mobilibus*, & *immobilibus*: as it is noted of them in the Councell at *Silzburgh*, where it is called *desolatio terrarum*, C. Nonnulli &c. And C. Ad extirpand. It seemeth also by the Councell at *Meaux*, that the Bishops were sometimes employed by their Patrons, *seculari negotiacione*, & *villicacione turpi*, in secular negotiations, and the meaner offices of husbandrie. The Priests indeed are called Pastours by the great Shepheard of Israel, but this must not be mistaken, for when it is said that the Minister must attend his flocke, the meaning is not that he should keepe sheepe. These and many more were the Patrons enormities into which hee that listeth further to enquire shall be sooner weary of finding than of seeking them. We have reserved for the last place that which of all other is most horrible. 'Twas enough to debase the Incumbent, and despoyle the Church, but *horrendum est dicere*, saith the 3. Lateran Councell C. 45. *quod in necem Prelatorum preumpere non formidant*: 'tis a horreur to report it, that nothing would content the Patrons but the life and blood of the Prelates, &c.

Upon the rising of these insufferable exorbitances, the Bishops called for their right againe, but the redresse was not made all at once, nor so soone in one place as another, to which varietie diligent heed must be given in reading the Councells to this purpose. The most notable reformation was attempted in the 3. Lateran Councell, where the authoritie, and consent of the Bishop is strongly reinforced. *Nemo enim Laici non possunt, nisi ius quod habent in alios transferre, huiusmodi concessiones virorum curarum determinare*, & *penitus irritas esse*, &c. So *Lucius* in the Canon of the Printed Copie: but in MS. Bidd. they are the words of *Alexand.* the 3, to the Abbots, Priors, &c. and the whole Clergie of *York* consents. This decree was accepted and ratified here at home, as appeareth by the Synod holden in the ear 1100, where every man is expressely forbidden *extemore Consilio Lateranensi*, *Decimas vel alia Ecclesiastica beneficia sine Episcopali auctoritate de manu Laici accipere*: according to the tenor of the Lateran Councell, to receive any Tythes or Ecclesiasticall livings from a Lay-mans hand, otherwise than by Episcopall authoritie.

Presentation during his pleasure. Therefore it was decreed, by the Law of *Lays*, that all Patrons should present after a certain time set downe: where we are to note, that the Canons allowed the Clergy Patron 6. Moneths liberie, & the Lay Patron but 4. And though this would not be received by the Common Law, yet what needed the Student to tell the Doctor that hee saw no reason why a Clerke

SECT. 5.

Exemptions frō Tythes brought in by Pope Paschal, favour towards all sorts of religious men, and how they have beene restrained by Pope Adrian.

NOW followeth the second effect hereof: and that is, the exemption of these Religious mens possessions from payment of Tythes, which is a priviledge of the Pope alone: for Monkes anciently paid Tythes of their land, before these priviledges, as other Lay-men did. But *Pascalis* the second, casting a more favourable aspect towards Monkes, and other Religious men, than any of his Predecessours before time had done, did order together with the Councell of *Menis*, That neither Monkes, nor other Religious persons, or any other that lived in common, should pay Tythes of their own labours: Which immunitie in proccesse of time, Pope *Adrian* recalled, so farre as it concerned the rest of the Religious persons, and limited it onely to the *Cystertians*, *Hospitalers*, *Templers*, and those which were of the order of *S. Johns* in *Jerusalem*, leaving onely to the rest freedome from paying Tythes of lands newly broken up, and laboured with their owne hands, and of their garden, and of their cattell. In which state the matter stood untill *Innocent* the thirds dayes, who although hee were in no other point of better mould than the rest of the Popes were; yet was he in this more pittifull towards poore Incumbents of Parish Churches, than any of his predecessors had bin; who seeing hereby the inconveniences of beggery and ignorance that grew upon sundry of the Parochian Priests, by meanes of these Priviledges, ordered in the second *Lateran* Councell, holden in the year of grace 1120. that for such lands as any of the said foure Priviledged orders, should acquire, and get after the said generall Councell, they should pay Tythes, or compound for them as other men did, yea though they laboured them with their owne hands, or manured them at their owne charges. Which consideration also moved *Henry 4.* King of this Realme, to provide by Statute, first, that such of the order of *Cystertians*, as had purchased Buls to be discharged of Tythes should be reduced into that state, as they were before: Then, that no person Religious or Secular, by colour of any Bulls, containing any priviledges, to be discharged of Dismes pertaining to any Parish Church, nor put in execution, should put the same in execution or should purchase the like in time to come. Whereby it is very probable, that few of those lands which are now challenged to be free of Tythes by the Statute of the 31. of *Hen. 8.* are free of Tythes in deed: for that they are no otherwise freed by that Statute, than that they were first freed in the Religious mens hands; so that if they were never freed in their hands, they remaine still charged with Tythes. But betweene this interruption of not paying of Tythes,

*C. Ex par-
tina glos.
in verb. la-
teranum de
Decim.*

*End. in di-
cta glos.*

*C. nuper
Abbatib.
de decimis.*

*An. 2. H. 4.
c. 4.*

*An. 7. H. 4.
ca. 6.*

*31. Hen. 8.
a. 13.*

wrought by *Innocent*, in the second *Laseran* Councell, and the dissolution of Monasteries, effected by *Henry* the viij are three hundred and thirty yeares, and betweene the foresaid Statute, made in the seventh yeare of *Henry* the fourth, and the subversion of the Monasteries, brought to passe by *Henry* the eighth, as hath beene before remembred, are one hundred and thirty yeares. In which long distance of time the one from the other, it is not to be doubted, but many of those Religious Houses were built and indowed, which by no possible meanes could be partakers of those priviledges which were abolished before the time of their erection: neither was there any reviving or renewing of these priviledges by any Pope of *Rome*, or Prince in this Realme, after they were thus first repealed by the Pope and Prince aforesaid, for ought that I have read, or heard to the contrary.

So that if this matter were well understood, and the ages and orders of those Religious persons, from whom the clayme is made, were rightly conceived, it would give great light unto the Judges, to discern what lands were exempted from the payment of Tythes, and what not: for now many are pretended to be exempted from Tythes, which never were of any of those foure Orders, and if they were, yet were they not before the time of the interruption, but since.

S E C T. 6.

That reall compositions for Tythes, are the devise of Ecclesiasticall Lawyers, and are to be tried by the Ecclesiasticall Courts.

AND so farre as concerning the second effect of these Priviledges. Now it followeth that I speake a word or two of Compositions, which are agreements between persons litigant, whereby either partie may know their owne right, and not strive againe about doubtfull matters. As good Lawes have growne out of ill manners, so Compositions have risen out of quarrels, caused by priviledges, and other

D d

like

like exemption for matter of Tythe : whereof, although there bee no speciall Treatise in the Law, as there is of the rest, yet they are so often mentioned by the Decretals themselves, as that it is not to bee doubted, but that they are part of the Ecclesiasticall Law, as well as the rest are, and that they are the devise of the Ecclesiasticall Lawyers, and not the conceit of the Common Lawyers, the forme and stile of them doth well shew, which savoureth wholly the manner and phrased of writing of the Ecclesiasticall men, and hath no touch of the Common Law at all. And if the devise bee the Ecclesiasticall mens, as all Bishops Registers every where doe shew, which are full of these compositions, why should not also the triall be theirs, that every cause might have his ending, where it hath his beginning? *Eorum enim est legem interpretari, quorum est condere.*

S E C T. 7.

That the curiositie of School-men, in their distinctions upon Tythes, have helped forward Appropriations and Exemptions from Tythes. The Opinion examined, as concerning the Quotitie of Tythes, whether it be Morall, Ceremoniall, or Judiciall.

ANd these are those greivances of the Church, which I said the School-mens curiositie in their distinctions, either invented, or gave strength unto them after they were invented; but invent them all, I thinke, they did not, for that these Acts of Appropriations of benefices were somewhat more ancient than the School-men themselves are: but the rest of the Priviledges, they either came into the world with them, or ensued anon after them, so that I may well say, they much strengthened this iniquitie. For when that every man understood by their Doctrine the quotitie of Tythes, or the tenth part thereof was not precisely by Gods Law (since the light of the Gospel sprang out as the day light unto the Christians, who before sate in darkenesse, and in the shadow of death) but that it was by the institution of the Church

Church only; then began they freely to spoyle the Church of her due Tythes, and to give away that to one Church, that was due to an other. And the reason that perswadeth the School-men to this, was, that after much adoe, dividing the whole Law of *Moses* into three parts, the Morall, the Iudiciall, and the Ceremoniall; they did conclude, that there were three parts likewise in the Tythe, the one Morall, which was a necessarie maintenance for the Minister, and therefore was naturall and perpetuall: the other Iudiciall, which was the number of ten, fit, as they taught, for that people onely, and therefore was positive and re-motive: the last Ceremoniall, and that was the mysterie contained in this Quotitie, or number of Ten, which being but a shadow onely, was abolished with the Law it selfe: whereby they did inferre the precise number of Ten being taken away, by reason of the Ceremonie it selfe, a competence now onely doth remaine for the Minister out of the Tythes: which opinion hath beene well confuted of late, by a very learned man, as his Treatise thereof doth well shew; but I feare with lesse successe, than the truth of the cause doth deserve, for this is a point that toucheth many mens private benefite, and therefore shall have no more favour than it needs must.

But the devise whereon the School-men did build this Ceremonie is this, that as all Digits under ten are unperfect, and doe tend to ten as to their perfectnesse; so all men, save Christ alone, are unperfect, and have need of Christs righteousness to make them perfect: Which *Abraham* well knowing, paid Tythes to *Melchisedech*, who was the figure of Christ, as therein acknowledging, that himselfe and all mankind, who were represented by the other nine Digits were unperfect by reason of Originall Sin dwelling in them, and therefore had need to bee perfected by Christ, who was figured by the tenth number.

All which that we may grant to be true betweene Christ and all mankind, as it is true indeed, and that ten is the perfection of the other numbers under ten, for that all the rest

Thom. in quodlibet part. 3. art. 6. q. 6.

Idem part. 22. q. 87. art. 1.

of the Digits, when they come to ten, returne back againe to ten, and are multiplied by the coupling of themselves with ten: yet, where is this proportion betweene Christ and ten in the Scripture, that should make this Ceremonie? which if it cannot be found any where, nor any consent of the primitive Church shewed for it, as I thinke it cannot be, then may it with as good authoritie be rejected as it is received. For albeit *Thomas Aquinas* himselfe was tearmed a Seraphicall Doctor, that is, such a one as had a sense in the understanding of the holy Scripture above all others of his age, and that he did much profit the studie of Divinity, with his wittie distinctions: yet is not his authoritie such, that it must prevaile in cases of Divinitie, without the authoritie of the Scripture, and the consent of the ancient Fathers of the primitive Church, interpreting this peece of Scripture in that sense as he doth, which would make a sweet harmony if it might be had.

*Eximius in 2. c. 3.
Genesis.*

And therefore as to my poore sense, better said a learned man of our time to this point, writing upon the Sabbath day in the second of *Genesis*, which may be also proportionably understood of the tenth, for that they, were both before the Law in their very number, and were but repeated by *Moses* under the Law, because they had bene approved by God before the Law in the selfe same numbers: and that which hee saith of the Sabbath is this, that albeit it hath a Ceremoniall designation of the day, that is, that it doth figure unto us our perpetuall rest, which we shall have in heaven, after that there is a new heaven and a new earth, yet there is therein two parts, the one naturall, the other positive, as that God should have a seventh day of worship, this is Naturall, and therefore doth remaine, because it is perpetuall: but that this seventh day of the Lords worship should bee the seventh after the Creation of the world, this was positive, and therefore was changed by the Apostles and blessed men of the primitive Church, into the seventh day after the Resurrection of our Saviour Jesus Christ: which, as it is verified by him in the Sabbath, so may it be in like sort vouch-
ched

ched by like reason in the tenth, wherein also by like semblance there are two parts, the one naturall, the other positive. The naturall is this : that God out of all the fruits of the earth, the increase of cattell that are worthy of him, and fit for mans use, should have a tenth, both in the acknowledgement of his universall government over us, and also for the provision of his ministers, and therefore this remaineth: & in that sence immediately after the dissolution of the Jew's policie, the good Christians of the Primitive Church, as soone as they could get any outward forme of a Church, & peace from persecution received it in the very quotitie, as a thing no lesse belonging to their Ministers, than it did appertaine to the Priests, & Levites of the Law : But that the Lord annexed these Tythes by *Moses* to the Priest & Levites for their maintenance, during the time of the dispensing of the mysteries under the Law, this is positive, and therefore changed by the good Christians in the Primitive Church, from the Jewes Ecclesiastiques to the Christian Ecclesiastiques.

Neither can it be thought that this number came from the Judicall part of the Law, as a fit proportion to maintain one Tribe, out of the revenues of the other eleven Tribes : for that this number, or quotitie was revealed to be Gods long before the Law, and before there were any such division of Tribes among the people of *Israell*; which then were not, but were parted afterward by *Moses* into families according to the number of the twelve sonnes of *Jacob*. And therefore it is not to be presumed, that the Law which came long after, imprinted a forme upon that, which was so long in being before there was any Law or Ceremony. But as the Apostles, or prime Christians, vvhhen as they did first change the day of the Sabbath by divine inspiration, or otherwise, from the day of the Creation, to the day of the Resurrection, durst not substitute any other day into the place of the first day, than a seaventh; for that the Lord had revealed his pleasure in many places of the Scripture as concerning that number, for his day of worship, so that no other day could be appointed for his day

of worship than a seaventh: So neither durst the good Christians of the Primitive Church (moved no doubt with no other instinct then the other were, when they translated this provision of Tythes for their ministry from the Jewish Church unto their owne Church) change the number of ten into another number besides, more or lesse: For that God had no lesse manifested his will in sundry parts of the Scripture, as concerning this number, to be a number for the maintenance of his ministrie, than he had declared his pleasure as concerning that other number to be a day for his honour, challenging it every where in the Scripture, in the very quotitie for his owne right, and counting it robbetrie if it were at any time with-holden from him. And therfore it may be well thought, the School-men herein did great wrong to the Church, who by their quaint distinctions brought this certaintie into an uncertaintie, which is no where to be found in the Scripture. Which I am more bold to speake, for that I see some have trod this path before me, and shewed by good demonstration, that the turning of this quotitie into a competencie is a thing nothing warrantable by the word of God, but that the quotitie ought still to stand as a perpetuall right due to God and his Church. But hereof hitherto.

CHAP. V.

SECT. I.

That a Bishop being Lord of a manor, and prime Founder of a Benefice, could not in the first erection thereof by his own capacitie, retaine any Tythes in his hand, and passe the same after in Lay-fee to his Tenant, and so give cause to his Tenants of prescriptions against the Parson.



And so having passed over this whole proviso of Law, Statute, Priviledge, Prescription, and Composition, I might well leave the turning of this stone any more, but that yet there remaineth one Prohibition

tion of prescription to be handled, which in my fancie is worse then all the rest, for that it draweth away from the Parochian Church her maintenance, & transferreth it upon Lay: and that which is worse, it makes Bishops to be instruments hereof, who are to be patrons and defenders of Churches, and not pillars or powlers of the same. And yet the authors thereof do imbrace it, and kisse it as a golden birth, or as if that *Juno* her selfe had beene present at the Nativitie thereof. And the devise is this.

A Bishop being owner of a Manor yet not divided into Tenancies, nor having any Parsonage erected upon it, ordaineth the one, and divideth out the other: here the Bishop being seised in the whole Manor before the said division, because hee is a Clergie man, is supposed to be in possession as well of the Tythes, as of the Manor it selfe, and therefore after creating a Parsonage, and dividing out his Tenancies, may retaine and keepe to himselfe, and his said Tenants, so much of the said Manor discharged of Tythes as him listeth, and assigne over the rest for the maintenance of the Minister, and that his Tenants after may challenge exemption from Tythe, as the Bishop did, for that they were exempted by his capacitie while they were in his owne hand.

Neither of which is so by Law; for inasmuch as a Bishop is an owner of a Manor, and is a prime founder of a Benefice, hee hath no more right to the Tythe thereof than a meere Lay Patron hath, who for his zeale to the Church, & to encourage others to be like affected to Gods Religion as himselfe is, may have some small pension assigned him and his for ever by the Bishop out of the same benefice; in acknowledgement of the erecting, founding, or endowing thereof: but for any portion of Tythes to him or his, hee could never retaine any, nor can to this day, neither yet can the Bishop himselfe, unlesse perhaps hee will be like to *Ananias* and *Saphira*, which held part of the price of their ground from the Lord, and were worthily punished for the same. And as they cannot detaine it themselves, being spiri-
tuall

Actorum. 5.

*Ca. quamvis de
decimis. 19. ibi
Abum. 5.*

*Ca. tua nobis de
decimis.*

small men, so much lesse can they passe it over to any Lay man, for that Lay people neither by Gods Law, neither by Canons and Decrees of the Church, were ever capable of them: yea, it was so farre off, that ever any Bishops durst incoffe any Lay man in Tythe; that whosoever did it, was to be deposed & excommunicated untill such time as he restored the same to the Church againe. And to say the truth, Tythes were never at any time in Bishops as in Fee, but in very few cases, as where the Bishop had a Parish himselfe, distinct from other Parishes, for sundry Bishops in sundry places had so, and then the Tythes of the Parish did belong unto them, in such sort, as they do now belong unto the Incumbents thereof: Or, if the Tythe were not within any Parish, for then in like sort it did belong unto the Bishop of the Diocese, in whose Territory it was; albeit, now within this Realme it belongs unto the King: or where the Parishes were undistinguished, for then were they the Bishops, not to convert to his owne use, but to divide among the Ministers and Clerkes, which laboured in the Diocese, under him, in Preaching, Teaching, Ministring of the Sacraments, and executing of other Ecclesiasticall functions, every one according to his desert: Or that it were the fourth part of the Tythe, for then did it belong to the Bishop in Law, towards his owne reliefe, and the repairing of the Parish Church where they grew, and not to conferre or bestow the same, as him thought best; which notwithstanding now also is growne out of use, and nothing left unto the Bishop from the Churches of his Diocese, beside his Procurations, and Synodals, to be paid by the Incumbents in the time of his Visitation. Beside which cases, it cannot be found, that ever any Bishop had to doe with Tythes, much lesse to alyen, dispose, and transferre the same as him listed, and to whom him listed.

SECT. 2.

That Bishops endowments in the beginning stood not in Tythes, but in finable Lands.

FOR it is very certaine, Bishops endowments themselves, in the beginning of the Primitive Church, stood not in Tythes, but in good Temporall and finable Lands, which gracious Princes, and other good benefactors of former Ages bestowed upon them, as it doth appeare out of the first booke of the Code; where sundrie Lawes of *Constantine* the great, and other gracious Emperours, even to the time of *Justinian* himselfe are recorded, both for the conferring of Lands upon the Church, and those such as should neither be barren, neither charged with Statute, or other debts of the Exchequer, as also for the conserving and safe keeping of such Lands as vvere in such sort conferred, and bestowed upon them: and it is manifest also out of our owne stories, both in the *Britans* time, during whose Raigne there are reported to have beene fifteene Archbishops in the See of *London*, well endowed with possessions, and if they were Archbishops, then must it necessarily also follow there were Bishops, for that these are respective one to the other. The like is vvritten of the Saxons Raigne, under whom the See of *Canterburie*, the See of *London*, the See of *Rocheſter*, and the See of *Yorke* (for these foure vvere first set up againe after the Saxons first received the faith at the Preaching of *Augustine*, *Melitus*, and *Iustus Paulinus*) are namely reported to have beene enriched vvith large Dominions, and possessions, given to every of them for their maintenance. And vvhat course hath beene held vvith Bishopricks erected since the Conquest, the ruined state of them, and others doe shew, amongst whose ancient livelihood is not to be found any indowment by Tythes, but such as of late have come unto their hands, and that for the most part, by change of

Ec

their

*C. de sacrosanct.
Eccle. & de Epis.
& Clericis con-
stitut.*

*Authent. multa
magis C. de sa-
cro sanct. Eccles.*

*Locelin of Fur-
niss in his booke
of Britissh Bi-
shops. Stow fol.
37.*

*Hen. Hunting-
ton lib. 3.*

*Charta regis E-
thelberti, &
charta Will.
primi.
Stow fol. 77.*

Homer. Iliad.

Regum 1. c. 14.

their good finable Lands for impropriate parsonages. And therefore much to blame are some of our time, who (when as their predeceffours in former ages never admitted of any impropriate parsonage into their possessions, but onely in such cases as have beene before remembred) for the name and place of a Bishop will be content to make *Glaucus* change with *Diomedes*, that is, give their golden Armour for the others brazen Armour: or doe like as *Roboam* did, who in stead of golden shields, that his father *Salomon* did hang up in the Temple, put in their places shields of brasse: for the change is no better, and so well know they that procure the same, otherwise would they never so instantly desire it.

SECT. 3.

That the turning of Bishops indowments into tenthes, or Tythes for impropriate Parsonages is unsutable to the first institution, and very dangerous.

AND therefore an unsutable devise was that, and contrary to the course of former Ages, which was procured in the first yeare of the late blessed *Queene*, (not, as I thinke, by her owne seeking, for shee (good Lady) did in this as shee was directed, but upon some other policie) that it should be lawfull for her to take away so much fineable Land, from any of the Bishops as her pleased, and to give them backe againe in lieu thereof Tenthes, or Parsonages impropriate, which hath patcht them up againe but with unsutable peeces to their coate; whereby they are both brought into obloquie, as though they detained the due provision of the Parochian Church from it, and are set in a way ready to be overthrowne if every bird have his owne feather againe.

*Authent. de nō
alienand. aut
permutand. reb.
Eccles. 4. c. 5. si
mitemus.*

And therefore those good Emperors are most worthy of commendations, that when they had any occasion to make change of Landes with the Church, would still allow them the like in value or better: for a small gain it is unto a

Prince

Prince for a few thousands of increase of temporarie benefices unto his Exchequer, to draw a perpetuall losse upon a Church, or Bishopricke: for so deere ought the Spirituall state to be unto a Prince (upon whom God hath bestowed so many Kingdomes, and other things of price as hee hath done, and put such an infinite number of people in subjection under his feet) that hee would not in any case be hard with God, but thinke every greatest libertie towards God and the Church to be the best.

For certaine it is the Empire and Church do not much differ the one from the other: for as the Empire doth governe the outward man, and frameth him by outward policie to be a good and loyall subject to the state: So also the Church frameth the inward man by the word of God, and causeth him not onely to be a dutifull subject unto his Prince, but also to be an acceptable servant unto his Maker: So that there must be had as well an awfull care of those things that are consecrated to God, as there is a heedfull regard had of those things that belong unto the good of the Common state: for the Church was not made of God for the Common-wealth, but the Common-wealth for the Church. And therefore most gracious hath beene the consideration of our deare Sovereigne, vvho to stop all importunate suits made to Bishops, for the granting away of any of their revenues to himselfe, or any other, and to meete with the too too easie facilitie of many Bishops, in yeelding unto such suits; of his Christian, and Princely pietie and care, hath made a Law, whereby to protect the Churches possessions from alienation, or diminution, that they may remaine, and continue, according to the true intent of their foundation, to their successours for ever, to the uses and purposes therein limited.

*Dic. § si minus
Authent. ut su-
pra.*

*Anno primo
Jacob. Regni.
cap. 3.*

SECT. 4.

That is had beene a worthy worke in the first Reformers of Religion, if they had returned to every Parish their owne Parsonage; and the dislike that God may seeme to have conceived of that.

BUt here is occasion offered by the example of our gracious King, to wish that such as were authors to the King, for the dissolving of Monasteries, and other houses of Religion, had beene likewise Councillers to him for the restoring of all appropriated Parsonages of Tythes, which were, as it were, in captivitie under those houses of Religion unto their proper parishes from whence they vvere taken. Which had beene a memorable vvorke, and easie to have beene perswaded, the King having so many great mountaines of temporalties and Seas of goods, and chatels come unto his hand: so that these spiritualities would have seemed matter of small account unto him in comparison of those other great riches, & possessions, that came unto him. Which if it had beene done, how blessed a state and Church had this beene, when every congregation should have had a sufficient provision to maintaine a learned Preacher among them: for so was it by the first institution, and so continued, till violence, and superstition changed it. But I feare those men which began this worthy worke, had not such a sincere minde towards Almighty God in this reformation, as they ought to have had, but that they sought therein their owne advancement, more than they did the glory of God; which I doubt mee, lest God hath remembred, in some of their posteritie, which being left in great state, have either so vanished away, as that their place is scarce to be found, or else doe so continue, as that their posteritie ever since hath beene as it vv ere in a minoritie, so that they are as though they vv ere not, great in place, but small in reputation: yea the three fairest branches, or boughes that ever were in the

the world, issuing out of that tree, under whose shadow all these things were done, are quite gone, and live by no other posteritie, but by their owne worthy fame and glorious acts, which they did in their life time; which also now being gone, doe follow them, and so shall doe unto the worlds end, for they were all three memorable Worthies in their place. So dangerous a thing it is, to mixe our own ambition, or any other carnall consideration with Gods glory. But, God be thanked, such is the carefull consideration of our most gracious Governour, that now is, in this behalfe, that it may be hoped, that God will remember him, and his posteritie in goodnesse, according to all that good that hee hath done for the Church, that hee and his posteritie after him, may sit upon his Seat so long as the Sunne and Moone endures: for certainly, his godly and gracious complement, hath bene such hitherto, as that hee may bee verily thought to be a man according unto the heart of God, as *David* was. But now to the losse that comes to the Church by these Impropriations.

¶ Whilst the Parochian Churches stood in their essentialities, that is, while they did enjoy the naturall endowments due unto their place, that is, all manner of Tythes, and other Ecclesiasticall dueties, growing and arising within the compasse of their Parish, due by the word of God, they preached unto their Congregation, they prayed for them, they ministered unto them the Sacraments, they kept hospitality among their Parishioners, and releevd the poore, so farre as their portion would reach unto; which was a comely thing to behold, acceptable to God; comfortable to their Parishioners, & convenable to their calling: but after the same were appropriated to Religious houles, these good courses were much disguised: for albeit those Religious men, to whom these Parochian Churches were annexed, did much pray for those congregations, as they pretended, from whom they had the fat of the Benefices, yet they preached litle to them, kept small hospitality among them, or did any other spirituall work belonging to any Pastorall charge; yet notwithstanding

ding the whole institution, for which benefices in the beginning were erected, was not altogether extinct in them, but there was some outward shape or forme of the first ordinance left them, so farre forth, as that they made continuall prayers and intercessions to God for them : but when it came once into the Laities hands, there was not so much as a foot-step left of the first institution, for they neither preach unto the people, pray for them, nor keepe any hospitalitie among them, but spend all the whole revenues of the Church, upon their private uses, which many times are unfit for such Spirituall provision to bee spent in : so that for the benefite of the Church, the returne of them might be well wisht, albeit in so farre as they are perplexed and intricated by the Lawes of this Land, with private mens states, it would be hard to be performed; for the changing of them would be much like, as if a man should move one stone in a vaulted worke, such as the stonie rooves of many Cathedrall Churches and Colledges are, where the taking of one stone away is the jeopardie of the whole building : But yet let those to whom this doth appertaine, consider whether in this it were better to please God, than man.

CHAP. VI.

SECT. I.

That Tythes are a Parochian right, and how Parishes in the Christian world, came first to be instituted.

UT now to returne thither where I left : as every good Bishop, or any of his Clergie, did win any Conntrie-village, which the Latins call *Pagum*, to the Faith ; so they erected up a Church there, and appointed a Pastor or Minister over them, to informe them in the Law of God, and to minister the Sacraments unto them : and set out for his maintenance the Tythe of that Page, or Village, to which he was assigned Pastor : which they did in Tythes,

Tythes, rather than in any other provision, both because it was the Lords inheritance in all ages, and appointed by him for the maintenance of such as served in his Tabernacle, during the dispensation of the mysteries of the Law, and now was returned againe into Gods hand by the expiration of the demise of them, made unto the Levites, during the said time of dispensation; & also because the people would be more easily induced to part with one part out of every ten, of all the fruites of their grounds, and labours of their hands, unto the Minister, than if there had bene any other regular imposition laid upon them: for certaine it is, Villages and Pages came more hardly and more lately unto the Faith, than great Townes and Cities did; and thereupon grew that name of opposition, which was betweene Christians that dwelt in Cities, and the Infidels that dwelt in Pages, that the one were called Pagans, the other were called Christians, taking their names upon the difference of the places where they dwelt. But from these Pages, (as I have said) came first the use and practice of Tythes in the Christian world, insomuch as after when any Law was made, as concerning Tythes, they held them evermore for a Parochian right onely, and in no sort at the disposition of the Bishop, but in such cases as before is rehearsed; insomuch, that if a Bishop challenged any Church in his Diocese, he challenged it not in respect of any fee simple hee had in it, but in regard of the Spirituall Jurisdiction he had over it. And therefore the Authors of this opinion were farre out of the way, when as they thought the Bishop had like right in the Tythes of a Church of his Patronage, to give and bestow them as hee listeth, as hee hath in his demeanes, and other his Temporall Lands, either to lease them out, or divide them into Tenancies, as him best liketh.

Neither is that case clere or without question, whereby they pretend a Bishop being seised in a Manor, may prescribe the Tythes of the demeanes thereof, by an immemoriall prescription for him and his Tenants, and Farmers for yeares, and Tenants at will, to be exonerated, acquitted, and

C. Cōm contingat de Decim. verb. de jure coi. in gloss.

Ab. ca. nuper de Decim. & cap. deputati de ludeciis num. 16.

privi-

*Ab. cap. ad hoc
De Decimis nu-
mer. 4.*

priviledged from all Tythes growing thereupon : which if it be against an other person than himselfe, may hap to bee true, although perhaps also that be questionable, for that it is not long since Lay-people were capable of that right ; neither could themselves by Law of the Church at any time grant such Spirituall Rights as these are, to a Lay-man, either in *Feudum*, or *Emphyteusim*, without danger of Excommunication, or deposition of their owne place, as hath beene before shewed. But if himselfe, or his predeceiours were Parsons there, either in the right of their Bishoprick, as hath beene of late before remembred, or that the Benefice was annexed unto their See, for the provision of their Table, as many Bishopricks had some one or more Benefices appropriate unto them to this purpose, then could they not prescribe the Tythes in such sort as is pretended : For, albeit no prescription proceeds without possession, yet no man can prescribe against himselfe, although hee be in possession ; for that evermore there must be two persons in a prescription, the one which doth prescribe, the other against whom it is prescribed ; and therefore in these cases it is never said, they hold their Tythes by prescription, but in the right of their Church, or Parsonage. In either of which cases, if they were Lords of the Mannor, and Parsons of the Parsonage together, it is not to bee thought they would so respect the good of their Farmer, as that they would either hurt their Church, or prejudice their owne Table, for their Farmers sake : which they must doe, if they suffer a Prescription to runne against the Church, or themselves to exempt the demeanes of the Mannor from payment of Tythes, which were due both to the Church, and themselves : For they were men, that both knew in their conscience, how much they were bound unto the Church in this behalfe : and they were not ignorant what prejudice they should do unto themselves, if by prescription they should yeeld to exempt so necessarie a provision for the maintenance of their Hospitality, as the Tythes of the demeanes of a whole Mannor, and their tenancies are : for no small part of their

com-

commendation stood in those dayes in their hospitality, and therefore it is not to be presumed, that they would easily cut off any provision that was fit for the same. Besides, if by either of these two wayes, the Bishop was Parson of the place, then did the fruites of the Benefice, during every Vacation of the Bishoprick, not come to the King. (as they now doe, whereby the Parsonage and Mannor are both consolidated into one, for that they are now both holden to be Temporalities) but the Parsonages came to the Archbishops of the Province, as a spiritualltie granted to his See by privilege, during the vacancie of the Sees of such Bishops as were in his Province, as may appeare by the Lord Archbishops Records of *Canterbury*; so that it cannot be thought any prescription could runne in these times, being so often interrupted by vacancies as they were. Which being well considered, the conclusion is very doubtfull, whether ever any prescription ran in this case, neither would it easily bee beleevied by those that know the course of Antiquity, but that there hath a judgement passed in this part; and therefore will I stay my selfe here, and prosecute this point no further.

*Ex Registro
Archiepiscopi
Cant.*

S E C T. 2.

That Tythes of Minerals are due.

I Intended to say nothing in this Treatise of the Tythes of Minerals, and other subterraneous bodies, because I know by Law, they are holden by the like right, as the Tythes of those things are, which grow in the upper face of the earth; but yet because I see there is a question made of them, by some that will make every thing controversable, that is due unto the Church, I will satisfie also their curiosity: And therefore, for Mettals, & other substances which are digged out of the bowels of the Earth, and therefore are called *Fossilia*: this is certaine, that what God worketh here in the superficies of the Earth, for those things that spring out of the earth, by the heat of the Sunne, the temperature

Ff

of

Eraſm. tractat. de ortu Metallorum.

of the Aire, and the influence of the Celeſtiall Bodies; the ſame he effecteth below in the depth of the Earth, for the generation of Mettals, and other ſubterraneous bodies, by the heat and cold of the Earth, that is included in the bowels thereof: For by the heat, hee raiſeth up vapours and exhalations in the matrix thereof, as the matter of thoſe ſubterraneous bodies; but by the cold, he drieth, thickeneth, hardneth, and indurateth the ſame into a Mettall, or Minerall, where-by hee giveth, as it were, a forme unto it. And as the diſpoſition of every exhalation ſo compacted and drawne together is finer or groſſer, hotter or colder, ſo is the Mettall or Minerall, or other ſubterraneous body, more noble or more baſe: yea, ſometimes by reaſon of this diverſitie of exhalations and vapours, drawne together at one time, are divers conditions of Mettals there confounded together, whereof ſome are noble, as Gold, Silver, and Copper; ſome other are of leſſe eſtimate, as Tin, Lead, and ſuch like. Neither doe theſe grow onely in the beginning, but they renew againe when they are digged up, (as Trees and Plants in the upper face of the Earth doe riſe out of the rootes and ſtemmes of thoſe trees which have beene cut downe) if the place of their new generation be prepared accordingly: For where-as the place of their generation is farre below in the Earth, Nature, of a certaine modeſty in her ſelfe, will not yeeld to the generation of theſe ſubterraneous bodies, but in ſecret places, far remote from the ſight of the Sun, and the privy of other Meteoricall bodies, which are under the firmament. And by that meanes it hapneth, that theſe Minerall bodies are rarely known & perceived to renew againe; for that being once expoſed to the light of the Sunne, they are ſeldome or never cloſed up againe, by reaſon of the greatneſſe of the gulfe that is made in opening of them. But yet the nature of them is ſuch, that if their bed were thereto prepared accordingly, they would conceive a new: Which is a thing ſo notorious in Quarries of ſtone, which are leſſe ſhaded at the ſight of the Sunne, and the preſence of other Meteoricall bodies in their generation, that the Law it ſelfe, and other good

*J. Soluto Ma-
ximonio, l. ſu-
per eos. 5. 13.
Plin. lib. 36. c.
15. & 18. de
naturalis Hiſt.*

good Authors have set it downe for an undoubted experience, that being digged up, they doe renew againe, by the nature and disposition of the mould wherein they are ingendered: For some Earths doe as naturally yeeld stones, and other minerals out of them, as others bring forth Corne, Hay, and other fruits: which if it be true in those bodies which are in the upper crust of the Earth, why not also in those bodies which are found and framed below in the Matrix thereof? And if these bodies doe both ingender and renew, which are conceived so farre below in the Navell of the Earth, why is not Tythe due of them, aswell as it is of other fruits that are in the summitie or heighth of the earth? Whether is it, that Gods hand lesse laboureth in the procreation of these subterraneous bodies, than it doth in the ripening and quickning of that fruit, that springs out of the upper face of the Earth? But that is farre otherwise, for here in these upper fruites, one planteth, an other watereth, and God onely gives the increase: But in the other Minerall bodies, God alone doth all, for hee only is the planter, hee is the waterer, and he gives the increase alone. Or is it that God hath lesse delight to be honoured with these hid treasures of the earth, than he hath to be worshipped with the labour of the plow, or the increase of the cattell of the field? But, that this is not so, it is plaine by the glorious Temple that *Salomon* made, which had not only Cedar trees for the rooſe thereof, and Algummin wood for the ornaments thereof, but also had quarrie stone for the wals thereof, and gold of *Paruaim* for the beautifying of it, and for the overlaying of it within. And of all other kinde of Mettals, Gold is first remembered in the Scripture, immediately after the creation of the world, so that God himselfe may seeme to have a speciall regard of this Mettall above the rest, for that this alone above all the rest, by purifying is not diminished. Or is it, that God loveth his Ministers lesse than other men, so that hee would have the Laity to have all the precious things of the earth, and his Ministers to have no part of any other thing, but that which is vulgar and common? But

Strabo lib. 3.

2. Chron. cap. 2.

*Genes. 2. vers.
11. 12.*

*Ca. ex parte de
Decimis, & ibi
Ab. 18.*

how unlike that is, who sees not, when hee seeth that God hath committed unto them, the inestimable treasures of his word; in comparision whereof, both these upper fruits of the earth, and those hid treasures below, are meere drosse and corruption? and therefore it is not like, when he hath committed unto them those great matters, hee would deny unto them these smaller blessings. Or is it, that there hath beene paid Tythes of the upper fruit of the earth already, and therefore cannot Tythe be twice demanded of one ground in one year, according to a new over-ruled doctrine? But that opinion is both contrary to Law many hundred yeares obtained in the Church without contradiction, whereby it is ordained, that as often as the earth fructifieth in one year, so often shall Tythes in the same year bee paid of it: and also it is contrary to Divinitie and reason, that it should bee otherwise. For when as God hath given thee more Harvest or more Vintages in one year, is it not both godly and reasonable, as God hath increased his blessings towards thee, so thou also shouldest rise in thankfulness towards him? For, where every one hath received more grace or more favour, there ought he to be more thankfull, lest God for lack of this correspondencie in thankfulness, bring thy nine parts, for thine ingratitude towards him, to a tenth onely. For certainly so hee is able to doe, by sending deluge and drought upon the earth, by bringing barrenness upon it, by destroying that which is sprung out of the earth already, by storme and tempest, by the Grashopper and the Caterpillar: for all this hath hee threatned to all those that are unthankfull this way, neither is the Lords hand more shortned now than it was then. Whereas notwithstanding to the contrary, hee hath promised great kindness unto such as shall pay their Tythes truly and cheerfully, as that hee will open the windowes of heaven, and powre out his blessings without measure upon them. *Hilarem enim datorem amat Deus.* Besides this, the earth that bringeth out mettals in the matrix of the earth, is not that that bringeth out corne and grasse in the top of the earth: for that earth that is the

the mother of mettals, being prest downe farre into the bowels of the earth, can yeeld no sustenance to those fruits that grow so many fathoms above it, to which it conferres nothing save that it doth support and beare up that other earth, which nourisheth the plants and fruits of the upper earth, whose sustenance is not fetch't deep out of the earth, but is suckt out of that earth which is with in one cubit, or two of the top of the earth : which may easily be perceived by those fruits and trees that grow upon hard rockes neere to the top of the earth, whose food, although it be neere unto the top of the earth yet do they flourish, and stand fast, as other trees and fruits doe, which have more fat and deepe mould under them. And therefore cannot the Tything of those things which are above, excuse the Tything of the treasures that are below, albeit the conclusion were true, that two things are not to be paid out of one ground in one year, for these are not one ground, and the conclusion it selfe is erroneous, and therefore I conclude this point thus: Since Mettals and minerals, and other subterraneous bodies are in no lesse Obligation to God, than other fruits of the earth are, there must be no lesse Tythes paid of them, than are of other fruits of the earth : for that these are the inward fruits of the earth, as well as those are the outward, and therefore of like things, there must be like judgement and like consequence. And thus much as concerning the Tythes of Mettals and Minerals.

SECT. 3.

That Tythes of Turves be due.

AND now because I am in this matter of Tythes, I will shape an answer to one doubt that is made, as concerning the Tythes of Turves, that is, of earth disposed, and prepared for fewell, which are said not to be Tythable, and that upon this reason: That Tythes are not paid of the earth it selfe, but of those things which spring out of the earth: which opinion is true, if it be understood of earth

not separated from the body, and masse of the rest of the earth. For if Tythes should be yearly paid thereof, as it is paid of other things that grow out of the earth, all the whole earth in a short time would become the Clergies. But if it be meant of earth that is severed from the rest of the masse, and globe of the earth, then is it otherwise. For that earth that is thus severed from the other earth, is no more part of that earth from whence it is severed, than a mans hand, or leg being sever'd frō the body, is part of his body after it is cut off from it. And therefore of this earth so provided for fewell, may Tythes as well be paid, as of any other fewell of wood, cole, or otherwise that is provided to be burnt. For there is one reason of things, when they are united together in one body, and another of those things, when they are divided from the same bodie: for so long as they are in one and the selfe same body, they follow the nature of the whole, but when they are divided, then is there another consideration of them. *Separatorum enim separata est ratio, & ex separatis non inferitur de uno ad aliud.* Come, Grasse, and such like, while they stand, are not Tytheable, although the Tythe then is in them *pro indiviso*: For while that they stand, they are part of the earth upon which they stand, and therefore so long untytheable, because the earth it selfe is untytheable. But if they be cut downe, then are they to be Tythed, because they are now no longer parts of the earth, but bodies by themselves separated from the earth, so that now the not tything of them is penall: Of which sort are curves seperated from the rest of the masse of the earth. Neither is this my opinion alone, but it was *Linwoods* long agoe, and other Ecclesiasticall writers, who not onely make Turfe Tytheable, when it is prepared for fire, but also great rods, and small twigges, stickes, and chips of timber, butts, and roots of trees, thornes, bryers, walnut shels, and nut shels, vveeds, coles, and cole-brands (called *Tisiones*, because they are so burnt as they shall not make a smoake) cowshards, which the Law calls *Editum bonum*. All which a man can use to

*L. finali. ff. de calumniatori-
bus.*

*Provincial. de
decim. c. sancta,
et ibi Linwood
verbo turbati.*

*L. Ligni appella-
tione § 4. 5
et 6. ff. de le-
gat. 3.*

no other purpose than to burne: for where wood lackes, these succeed in place of wood, and are called by the name of wood, and are in like obligation, as concerning the Tythe due thereout, as wood it selfe is; *Vbiunque enim est eadem ratio, vel eadem aquitas, ibi debet esse eadem juris dispositio.* And therefore not in that, that Turves sometimes were gremiall earth, they are to bee discharged of Tythe: but in that they are accounted for Fewell by the law, when they are so prepared to be burnt, they are to pay Tythes in like sort, as other things applyed to that use do.

L. Illud. ff. ad legem Aquilia.

SECT. 4.

That the cognisance of barren heath, and waste grounds belongeth to the Ecclesiasticall Courts, and what every of them are.

And so farre as concerning the Prohibitions which arise out of this proviso. Now it followeth that I speake something of the next proviso, which is concerning the Tythes of barren heath, and waste ground, and the Prohibitions thereupon.

2. Ed. 6. c. 23.

This proviso hath two branches, the one for comparative barren heath, and waste ground, the other for absolute barren heath, and waste, for either of which is assigned a time of seven yeares, either for the payment of such Tythes, as before the time of their improvement, and converting to arable, they were charged with, or for the free and absolute discharge of them from all manner of Tythes for seven whole yeares next after their improvement ended and determined. For so I take the Statute meant, when as it made the one Tytheable, the other not, for if otherwise they had beene both in one predicament of the barrennesse, the statute had not made the one free from Tythe for so many yeares as it doth, and charged the other all that time with Tythe.

For these two kindes of grounds, although the Statute say nothing, which is comparative barren, which is absolute,

lute, yet reason telleth us, that is comparative that hath a positive under it, and a superlative above it : and therefore that is comparative waste, barren, or heath, in respect whereof there is some over ground more or lesse, vvasfe, heath, or barren, so that it hath simply and positively in it some condition of heath, waste, or barren : but if it hath nothing of any of these qualities in it, then is it neither heath, barren or waste, howsoever long otherwise it hath lien unmanured, and not turned to tillage : For it is not the turning of a ground to tillage that makes it heath, barren, or waste, but it is the ill disposition of the ground it selfe, subject to these inconveniences, that causeth it not to be turned to tillage; for no man will willingly till that, where the gaine of the tillage will not quit the cost and labour of husbandrie, as for the most part it falleth out these grounds that they doe not.

*Glas. L. licet, C.
de locato et
conducto verbo
perstatat.*

Barren ground therefore simply, is that which being eared, yeeldeth not the seede againe, or at the most, yeeldeth so small advantage for the tillage, as that the tenant after that hee hath paid his Rent, hath not the worth of halfe his seede againe; much like unto that ground whereof the Scripture speaketh, whose barrennesse is such, as being eared, and sowed, neither the Mower filleth his hand, neither the Gleaner his lap with the yeeld thereof. These grounds are not onely called *Sterilia* of the Latines, but also *Infecunda*, *Infrugifera*, & *sine prole*, for the excessive barrennesse that is in them: and the Greeks upon like occasion terme such conditioned grounds; ἀργα, ἀκαρπα, στειρα, ἄρμα, καὶ ἀπορη, in which sence, money not put to usury is by the Law called barren money, and *Aristotle* calleth it fruitlesse money : for that mony was not devised thereby to increase money, as greedy usurers in all ages have done, but that by the meanes thereof men might ease the difficulties, and necessities of change of one kind of thing for another, as a horse for an oxe, sheepe for a goat, iron for brasle, and such like: for there is nothing that may not be esteemed by money, and the use of money, is the uttering of money, whereby

*L. si quis usum
usu ff. de cogni
protutore.*

*Arist. 1. 1. politici-
corum.*

*Arist. 4. Ethico-
rum, c. 1.*

whereby it is commonly said, Money is lost by the use thereof, not that money doth perish or decay by use, for wee see the cleane contrarie to that, for though money goe thorough a thousand mens hands, yet it is still of the same value, and remaineth in her proper essence or being: but that the use of money is in the laying of it out, and that by the use thereof, money passeth from him whose it was, and the propertie thereof goeth to another, and therefore as to the first owner it is spent, and lost: without which loosing, money naturally gaineth nothing; for lay it up in a coffer or chest never so long, it will never be the more in number, although perhaps as S. James saith, *It will gather a rust and canker, and that rust, and canker will be a witness against them which so hoord it up from the service of God, and the Common wealth, in the day of the Lord*: So then, as that money is barren, that lyeth still, and bringeth out nothing, so is that ground barren, that being tilled, yeeldeth no fruit, or at the most, so little as the gaine will not recompence the charge.

Iam. cap. 5. 7. 8.

Although heath ground, and barren ground be almost Synonymies, yet to speake properly, heath is as it were an effect of barrennesse, for that there is no ground that bringeth forth heath, but for the most part it is barren. And therefore as heath it selfe is an unfruitfull kinde of shrubs, and is good almost for nothing but for the fire; for that neither growing or cut downe, it hath any beneficiall use at all for the common wealth: so also the ground it springeth out of, hath neither fairenesse to the eye, nor goodnesse to the yeeld, but is commonly either a blacke sower ground, that hath no sweetnesse at all in it, or is a drie hungry soyle, such as evermore cryeth give, give, and never restoreth ought againe.

Proverb. 12.

Waste is that which for the unfruitfulnesse thereof hath layen time out of minde unmanured, in which fence it is all one with barren ground; or it is such ground as for the charge of hedging, ditching, fencing, and tilling no man will manure.

*C. commissum
de decimis ver-
bo inutilia.*

Our forefathers anciently comprised all these three under one name, calling them all by the name of *Novalia*, that is, new-broken-up ground, not onely because they were not broken up in the memorie of man before, but also, for that being eared, they yeilded little or no fruit at all: and therefore the interpreters of the Law defining what *Novalia* are, say, that they are such grounds as before the tillage therof were *inutilia*; & example them out, in Mountaines, Marshes, Thickets, and such other unprofitable ground, as out of which before the stocking of them up, and converting them to tillage, the Church tooke little or no benefit at all. And those are the same or cosen German to those which this Statute calleth heath, barren and waste, for they are one and the very selfe same vvith them, in all the chiefe points, for which they are excepted out of the Statute.

So then now, there is no further question what is heath, barren, and vvasle ground, but who shall trie the matter of this quality; whether the Ecclesiasticall Judge, in whose continuall possession this triall hath beene untill now of late, that under colour of this Statute, it hath bin incroched upon as it may appeare by all the Tides of the Ecclesiasticall Law, where there is any mention of the Tythes of new broken upground, and the decrees of the Lawgivers in the same, betweene the Monasteries: challenging them by graunt, and the Parochian Ministers of the Parishes vvhere they grew, claiming the same by right: Or the Temporall Judges vvwhose is the Cognisance of the Tytle, and Tenure of the ground, as also is the setting, letting, buying, selling, and other alienating of the same.

For the point it selfe, the Statute maketh no mention but passeth it over with silence; and therefore it is to be presumed that it meant, that it should there rest, where it was before the making of the Statute: for the Statute was not made in derogation of the Ecclesiasticall proceedings, that were before; but in affirmance thereof, as the whole drift of the said Statute doth shew.

And

And if the Statute had meant otherwise, it would surely have expressed it either in the proviso it self, or after in the derogatory clause; where it maketh an enumeration of such things as it intended should be exempted from the tryall of the Ecclesiasticall Law, and by vertue of this Statute, should not be comprised under the same, among which there is no word of this proviso, or any other in the same Statute before named.

Neither is it unto the purpose, that the Common Law of this Land taketh knowledge of the Tenure and Title of Lands, and such other complements belonging to the same; for these things that are here in question, are no part of those Legall Essences, which the Law requireth to the Tytle and Tenure thereof, as is Fee-simple, Fee-taile, and other of likenature, according to the learning of that Law, but these are certaine accidents over and beside the Tenure of the Land which may be present or absent without the injurie of the Tytle: as God many times turnes fouds into wildernesse, and springs of vvater againe into drinesse, and a fruitfull Land makes hee barren, for the wickednesse of them that dwell therein, and yet the Tytle or Tenure of the ground is not changed, by these changes of qualities, but remains the selfe same that it was: so that these things are no more subject to the ordering of the Common Law, than it is in the Common Law, to judge and determine what mould is white and what is blacke; what ground will beare wheat, vvhat barley, vvhat oats; for these things are no matters of skill of Law, that they need to be fetcht out of bookes, but they are matters of common experience which every country man can as well skill of, as the greatest Lawyer that is, and therefore the Law in this case is not desirous of any curious prooffe, but contenteth it selfe onely vvith the depositions of two or three honest men, which speake sensibly and feelingly to the point that is in hand, vvich is enough to direct any wise Judge in his sentence, so that it needs not these long circumstances of twelve men to teach the Judge what, and

how truly the witnesses have deposed. For if every qualitie of the ground resteth in the mouth of twelve men onely, then should no man be able to say out of the mouth of a witnesse, and pronounce thereupon, this ground is mountaine, this is plaine, this is medowe, this is arable, unlesse hee were warranted by the verdict of twelve men thereunto: which if it be an absurditie to hold, then sure it is a like absurditie to say, that barren, & heath, waste cannot be pronounced without a Jurie, for that these things are like obvious to sense, and of like qualitie as the others are.

And I pray you, when they have drawne it unto their tryall, what do they in effect otherwise than the Ecclesiasticall Judge would or should have done, if it had remained still under him? for do they give credit simply to the conceit of the Jurie, as touching that which hath bene declared, and pleaded in the cause before them, or do not the Judges themselves rather make a brieve of all that hath bene pleaded in the cause before them, and thereof make as it were a verdict, and put the same in the mouth of the twelve for their verdict, before they goe from the barre? So that the whole weight of the cause standeth rather in the Judges direction, in such sort as it is at the Ecclesiasticall Law, than it doth in the mouth of the Jurie; for the Jurie men for the most part, are simple people, and scarce foure of the twelve understand their evidence: so that it may seeme rather to be a matter of superfluitie than of good policie, to referre a matter to their verdict, vvhen as they say no other thing, than what the Judge taught them before; *Stultum est enim id facere per plura, quod fieri potest per pauciores*: for albeit perhaps some capricious fellow of the Jurie, upon the confidence of his owne braine, sometimes start aside from that which the Judge hath told him, and draw the rest of his fellowes, as so many sheepe after him; yet for the most part the Judges voice is their direction, their loadstone, and the North pole to guide them in this businesse.

Besides

Besides, in this Privile, as in some other precedent, there is a great disadvantage offered to the Clergie, which they much complaine of, and that is, that in cases of this nature, they are compelled to suffer triall under them, who are in a manner, parties unto the suit, by reason of the interest they have therein, either in present, or in consequence; so that many now adayes (learning too late by other mens harmes what the event in their owne cause will be) chuse rather to lose their right, than to venture their cause upon such partiall Judges, as the twelve men are.

S E C T. 5.

That the Boughs of great Trees are tytheable, and so also are the bodies, but in the case of the Statute onely.

ANd so far as concerning those prohibitions which are forced out of this Statute, for naturally they grow not out thereof: so that I might now passe over to the other branch of my division, that is, of such matters as are now held by the Common Lawyers, to bee in a certaine measure onely of the Ecclesiasticall proceeding, but were anciently wholly of the Ecclesiasticall cognisance; but that the name of the Statute, *De Sylva cadua*, offering it selfe unto mee in the conclusion of this Statute of *Edward* the sixth, gives mee occasion to speake something thereof, before I come to the rest.

This Statute, as the words thereof doe shew, was made in behalfe of the Laitie against the Clergie, for the exemption of great Woods of twenty yeares growth and upward, from the payment of Tythes; and that in three cases onely, where the wood was great, when it was xx. yeares of age and upward, where it was sold to Merchants, either to the profit of the owner himselfe, or in ayde of the King in his warres; so that without these cases, it seemeth the Statute intended no further exemption: for Statutes are things of strict Law, and are no further to bee extended, than the words thereof give matter thereunto, especially when

the thing is selfe naturally liable to ordinary course of the Law, as other things of like nature are, and the Statute comes in derogation of their ordinary course: as in this case, great timber anciently was no lesse tycheable than small trees are, and so by nature ought to be, if the Statute were not to the contrary: yet notwithstanding these limitations of the same, if great wood bee cut downe to any other use than to sale, as to build, or to burne to a mans owne use, a prohibition in this case lyeth, and yet is there no Identitie of reason to extend it, nor any absurdity would follow, if it were not extended; for here is neither money sought, (which gave occasion unto the Law-givers to make this Statute of exemption) neither is it an unnaturall thing, for to pay Tythes of great wood; for before this time they were paid, and by the Law of God, it seemes, they ought to bee paid; for that he that is taught, ought to communicate to him that teacheth him in all things: and therefore since the reason that moved the Law-givers to order it so in one case, ceaseth in the other, there is no reason of exemption; and when there is not an Identitie of reason in the things that are in demand, there can no sound inference be brought in from the one to the other, for of severall things, there is a severall reason, and a severall consequence; neither can there bee framed thereof a good implication, either positively, or remotively: neither hath this interpretation of theirs any warrant of Law for it, save that it hath beene so defined and decided: but what is that to the purpose, if it hath beene wrested and wronged contrary to the true sense of the Statute, and that by those that take benefit thereby, whose partiality being taken away, the thing it selfe would easily turne againe to his owne nature, and right would take place?

The reason they yeeld for the exemption of great woods of the ages aforesaid, although to themselves it be plausible, yet to others it is strange, as namely, that great Trees are part of the Free-hold, and that men use not to pay Tythes of their free-hold, but of those things which spring out of their

Gal. 6. 6.

*plowd. in Soby
contra Molyns.*

their

their free hold, as out of Corne, Grasse, Fruit, and such other; whereas indeed the tallest Timber tree, that is, if it were as high as the highest Cedar in *Lebanon*, is no more part of the inheritance or free hold, than the lowest blamable that groweth in the field; for they are both equally part of the ground wherein they grow, and doe take alike nourishment and sustenance from the same; neither doe they differ in that they are trees the one from the other, *secundum magis & minus*, as the Logicians say; but in that, the one is a great tree, and the other a small shrub: and the cause of this provision here in *England* for these great trees, was not for that one was more of the inheritance than the other, but for that the one yeeldeth more profite to the common wealth than the other, and therefore they have made the cutting downe of the one, more penall than the other: as in like case by the Civile Law, whosoever privily cutteth downe, or barketh a Vine, an Olive, or a Fig. tree, or doth any other unlawfull act, whereby any fruitfull tree, or any Timber tree doth perish and decay, it is Theft; and it is punished in the double value of the hurt which is done, and if he be Tenant to the ground which hath done this villany, he loseth his hold: which commeth not of that, that one kinde of Tree hath more state in the ground than another hath, but that the Law hath respected, the necessary use of the one more than the other.

By the Civile Law, although this word, Wood, be general, yet it is thus distinguished, that some is wood, some is Timber; which the Law calls *Materia*. Timber is that which is fitt to build or underprop withall: Wood is whatsoever is provided for fewell, so that under that name there passeth Reed, Cole, Turfe, Cow dung, and whatsoever is any where ordinarily used for fewell. Timber is of a higher consideration than wood is, inasmuch as if a man bequeath unto another all his wood that is in grove, field, there shall not passe by this legacie, such Trees as are cut downe for Timber: but if they were dotted Trees, or the owner thereof purposed them for fewell, and so cut them out into billet,

*ff. Arborum fur-
tim casarum,
toto tit.*

*L. Ligni appella-
tione de Leg. 3
et L. Carbonum
ff. de verb. signi-
ficat.*

*L. Ligni appella-
tione, §. Ofili-
um, et §. idem
ff. de legat. 2.*

or

or fagot, in such sort, as there could be no other use thereof than to burne, then it is otherwise: for by this meanes, of great wood, it is become small wood, as being cut out in shides or splinters, fit for to burne. So that in the reckoning of the Civile Law, Timber stands not onely in the nature of the wood it selfe, but is in the destination and purpose of the owner, who according to his good liking may make that wood, which is fit for timber, fire-wood, or timber: which if it were so in account with the great Lawyers of this Land, the Church should have more Tythes of Wood appointed for sewell, and lesse suite for the same.

Plowd. ut supr.

As they exempt the bodies of great Trees above xx. yeares growth, from payment of Tythes, so also they free the boughes thereof, upon this reason, that the boughes thereof are fit and serviceable for building, which although happily may be in some of them that are next to the Trunk of the tree, yet it is farre otherwise in those that are more remote from the same, whereof there can bee no other use, than to burne: and therefore the Law precisely holds, in case where wood is bequeathed, by which is meant fire-wood onely, unlesse the Testator otherwise expresse his minde, the lops of timber trees, which the Law calls *Superflua mensa materialium* are bequeathed, for that the lops have not that use that the Timber hath, that is, to build or prop up wihall, but they serve to burne onely: By which severall ends, there is severall consideration and account made of them. Neither is it to the purpose, that they alledge for the defence hereof, that the accessorie followeth the nature of the principall, for that rule is not true in every accessorie, but onely in such, wherein is the like reason as in the principall, which in the trunk and lop of a tree cannot be alike for building.

*L. Ligni Appel-
lat. S. Ofilius De
Leg. 6. Fod. 3.*

*L. Erst. C. de
Prædii mmo.
vnu.*

Further, how the Boughes of a tree that are of the same substance, as the body of the tree is, should be accessories to the tree, I see not, for nothing can bee an accessorie to another that is of the same nature and substance as the other is, as the legge, or hand, are no accessaries to the body, for that

that the legge or hand are of the same substance that the bodie is: The Child, neither while it is in the Mothers wombe, neither after it is borne, is an accessorie to the Mother, for while it is in the Mothers wombe, it is part of the wombe, and after it is severed from her wombe, it is a man or woman like principall as her selfe is: But that which is an accessorie to an other, must be of an other nature than the principall is; so in naturall living creatures, haire, hooves, hornes, and finnes, and such other like accrements, are accessories to the creature whose they are, for that they are of a farre different nature from the bodies, out of which they come: and so in other naturall things not living, as the Earth it selfe is, the Trees, Grasse, and fruit that spring out of the same, are accessories thereto. Further, in Civile matters, expences and executions are accessories to the causes out of which they rise: and in Marriages, Dowries, and Jointures are accounted accessories to them, for that without Marriage, neither Joynture nor Dowrie can stand. Usurie is said to be an accessorie to the principall, not in respect that the proper subject of either of them is Money, and so there is one substance or nature of them both, but in regard of the dependencie the one hath of the other; for hee that will make challenge to Usurie, must first prove there is a principall. But for the better clearing of these matters of accessorie & principall, we must know that in bodies whose substance is all one, There are some parts like, which the Philosophers call *partes similes*; some other unlike, being likewise called of them *partes dissimiles*, which in no sort are accessories one to an other, but make one continued bodie of both, which the Law calls *inseparabiles*: Similar parts are such, as have one substance, forme, and figure, as the trunk or body of a tree is all one in inward essence, and outward shape: Dissimilar parts are those, which have one inward nature with the other, but are divers in outward shew, as the boughes and rootes of the Tree are divers betweene themselves, and different from the body, and yet all agree in one substance, and have all the generall name

L. 1. ff. de ventre inspiciendo.

I. dotis ff. de jure dotum.

of Wood, whereby they are discharged from being accessaries the one to the other, and yet they are not under one capacitie or service, or one comprehension of Law, because they are unlike one to the other; and of unlike things, there is unlike reason, and unlike consequence.

Now upon these grounds to exempt Timber Trees wholly from the service of him, that is Lord aswell of the tall woods, as of the low shrubs, is very hard, for though himselfe dwels not in houses that are made with mans hand, nor hath any need of tall Trees to repaire his Tabernacle, or prop up his dwelling: yet since hee hath left such behinde him, as have charge of his flock, and feed them in word and worke untill hee come, and they dwell in earthly habitations, as other men doe, and their edifices and buildings have need of repaire, inlike sort as other mortall mens houses have, being all in like manner subject to rottenesse and corruption; great reason it had beene to have allowed him some proportion of these great woods, towards his servants necessary uses, during the time of their service here, and if not in the very tenth it selfe, yet in the xxxl. or l. part of the same, that God thereby might have beene aswell acknowledged to be the Lord of the great Oakes of the Forrest, and that by him they have their length, breadth, and thicknesse, as he is accepted and reputed to be Lord of the small brambles and bushes of the field: for as now the case standeth, God may either seem to have forgot himself, that hee hath not made timber trees tytheable, as hee hath done other smaller woods, especially having such occasion to use them, both in the Chancels of Churches that are dedicated to his uses, and also in the buildings and reparings of his Ministers houses, who supply his roome in their severall Congregations, untill hee returne to Judgement; or that may well be objected against us, in allowing such things for Tythes as us please, and disallowing the rest, as was by that ancient Father of the Church *Tertullian*, objected against the Senate of *Rome*, who being intreated by the Emperour *Fiberius* (for the strange wonders and miracles he heard to be

be wrought by our Saviour Jesus Christ) that he might be entertained among the number of their Gods, refused to doe, for that they heard that our Saviour was a Jealous God, and did in no sort admit the societie and fellowship of other Gods; which this grave Father hearing, (although many yeares after) said merrily, although wisely, That God should be God, if Man would let him.

And thus far of those causes which are held to be absolutely of the Ecclesiasticall cognisance, and yet notwithstanding are eclipsed by interposition of sundry contrary matters,

CHAP. VII.

SECT. 1.

In what cases Diffamatorie words belong to the Ecclesiasticall, and what to the Common Law.

NOW as concerning those things which have beene accounted but in a certain measure of the Ecclesiasticall cognisance, & yet notwithstanding have anciently, in a manner, been tried wholly at the Ecclesiasticall Courts, such as are matters of Diffamation, and matters of Bastardie, both which now adayes are much challenged by the Temporall Courts, to be of their cognisance. But here first of Diffamation, then of Bastardie.

To diffame therefore is, as *Bartol* saith, to utter reproachfull speeches of another, with an intent to raise up an ill fame of him; and therefore himselfe expresseth the act it selfe in these words, *Diffamare, est in mala fama ponere.*

Bartol l. turpia ff. de legat. 3.

Albeit Diffamations properly consist in words, yet may they also be done by writing, as by Diffamatory Libels, & also by deeds, as by signes & gestures of reproach; for these no lesse shew the malicious minde of the Diffamer, than words do.

Diffamatory words are uttered either in some scoffing or jelling manner, so as facetes & merry men use to doe, to make the company merry wherein they are; or they are spoken by some that have some weakenesse, or distemperature in their brain, either by drink, phrensie, or other lightnesse, or by any

Linwood c. authoritate verb. quacunque de causa in glos. de sent. excom.

rashnesse in their tongue: or they are poured out upon some rancor and malice, by some that envy another, with intent to diffame him, & spread abroad a matter of disgrace upon him.

*Arist. 4. Ethic.
cap. antepenult.*

Ephes. 4. 3.

*Extra de pre-
sumpt. c. 1.*

*ff. ad l. Aquili-
am, l. nam lu-
dus.*

*ff. ad l. lul. Ma-
jestat. l. famos.*

*C. Si qui Impe-
rators maledi-
xerit.*

*Bohic. cap. Si
culpa de inju-
rijs.*

*Linwood pro-
vinc. de sent.
excomm. cap. 1.
verb. maledice.*

Bohic. ubi sup.

If they be spoken in a jesting manner to make the company merry, if it bee in a fine sort delivered, it is by the Greeks called *Symphologia*, and is by *Aristotle* held to be a vertue, although by *S. Paul* it is condemned as a vice; but if it bee in homely and grosse sort delivered, then is it accounted to be a kinde of rudenesse or rusticitie; but whether way so ever they be uttered, there is, for the most part, no advantage taken against them, unlesse thereby there follow any discredit to the party, upon whom such jests are broken, for then are they not without blame, *Noxium enim ludus est in visio*, neither can that bee called a jest or sport, whereby a mans good name is hurt, or any crime imposed upon him.

The like may be said of those which speak hardly of any by the lubricitie of their tongue, or weakenesse of their braine, who for that they are not thought to speake such words maliciously, passe for the most part unpunished, *Lubricum enim lingua non facile ad parum trahendum est*, no though a man in this case speak ill of the Prince himselfe: And the Civile Law is so faine from taking hold of such words in these cases, that the Emperour himselfe hath said of them thus: *Si id ex lubricitate proferatur, contemnendum est; si ex insania, miserandum dignissimum est.*

But if the cause of such words bee rancor or malice, then are they altogether to be punished, for that there can be no just excuse made for them.

Such diffamatory words as proceed of malice, imply either matters of crime, or matters of defect.

Such as imply matters of Crime, either are such crimes which it is expedient for the Common-wealth to know, as Treason, Felonie, Murther, Incest, Adulterie, and such like, to the end they may receive due punishment, whereby God may bee pleased; and the Common-wealth satisfied: Or they are such crimes or faults, which it is not expedient for the Common-wealth to be acquainted with; as vvhhere one calleth one prodigall, or spend-thrift. For albeit it bee expedient

expedient for the Common-wealth, that no man mis-spends his estate, for that the Common-wealth hath as it were an interest in every private Subjects state, yet this is rather his owne hurt, than any other mans, and that which he spends away unthrifely, commonly turnes to another better Subjects gaine, whereby the Common-wealth is relieved in one, that it lost in another; and for the most part there is no great corruption of manners in the example thereof.

A great while it was before the Lawes of this Land tooke knowledge of Diffamations, as counting them things belonging to the Spirituall Law, so they were duly prosecuted, as may appeare by certaine Judgements and consultations which have issued out thereon: but now let men prosecute them never so duely, yet Prohibitions goe out on them daily, and sundry others are drawne to the common Law Courts by action of the case; wherein they have so infranchised themselves, as that they take upon them to confine the Ecclesiasticall Law how farre it shall goe therein. Which limitations notwithstanding, as farre as I can conceive, are but distinctions without differences, and so are in very deed but bare *Synonymies*, that is, diverse names expressing one thing: for all the words in the said limitation inferre no more than this, that Ecclesiasticall men are not to deale in matters of Diffamation, but vvhere the matter of Diffamation is onely Ecclesiasticall; and yet of reverence the Author thereof as a great man, and of like excellencie in this Law, as *Papin* was in the former Law, and this I thinke to be commendation enough, for never any Lawyer in former age had more commendation, or eulogie of vvirt than himselfe had.

In the first of these cases, if a man proceede by ordinary course of Law, either for the punishment of the sinne, as by presenting the offender to the Ordinary, or indicting him before the Temporall Judge, or by admonishing him by any charitable denunciations, with purpose to amend him,

Term. 12. Hen.
7. fol. 22. Regist.
pag. 49.

C. ad L. Inliam
repetundarum.
l. 1. c. 2.

*ff. de aqua plu.
arcedia. l. 1. §.
denique.*

*L. Proculus &
l. fluminum in
fin. ff. de damno
infecto.*

*ff. de regul. iur.
l. factum §. non
videtur.*

ff. de iur. iur. l. 1.

*L. Labea de su.
pell. legat.*

*C. de famosis li.
bet. l. 1.*

*ff. ad l. Aquile-
am l. si ita vul-
neratus.*

and to recall him from such offensive waies as hee is charged to walke in : Or do any thing in Judgement for the defence of his owne cause, as in objecting some thing against the partie himselve, or his witnesses, either for the elevating; or discrediting of the truth of the cause, or the testimony of the witnesses; there can be no advantage taken against him for he cannot be said to defame, which useth the libertie the Law gives him : albeit in this case some advise that a man shal object none of these matters against another in judgement, but when his cause necessarily requires such things to be spoken for the defence thereof, and that the partie that objecteth them doth protest he doth it not with a calumnious minde, but that the defence of his cause otherwise would not be justified.

But if any man doe any of these things maliciously, with purpose rather to utter his owne cankered stomacke, than that hee would benefit the Common wealth thereby, then is hee punishable : for although it be behoofesfull for the Common wealth that bad mens faults should be manifested, that so wickednesse may be punished, yet is it not fit they should be uttered in reproach and choller.

Of the second sort, although there be some that containe petty crimes, yet are they many times so frivolous, as that they yield no action : for frivolous and small things the Law regardeth not.

For such Diffamations as arise upon defects, if the defects be such that the contagion thereof is to be feared, unless the people be forewarned of the danger that may ensue thereon, as in cases of Leprosie, the Plague, the French Pox, and other like infectious diseases, and that it be revealed with a sincere minde, rather to cause men to refrain their companie for feare of the infection, than of any malicious humors against the partie, thereby to reproach him, it is no Diffamation. But if it be uttered in any spleene or choller against the partie defective, then is it actionable; for it is an uncivile part to lay open another mans defects : but if the defects be such, as it nothing availeth the Common wealth

ff. de iur. iur. l. 1.

*C. quando &
quib. quæra
par. l. 2. lib. 10.*

wealth they should be knowne; as where a man objecteth against another any imperfection of his minde, or deformitie of his body, which hee had from his cradle, or hath happened to him by any accident without any default of his, and cannot be easily remedied; or reprocheth him with any thing in his state or condition, wherewith hee is not justly to be charged, neither is there any just cause offered the diffamer why hee should use such disgracefull speeches against the other, then is it altogether punishable: For that such things tend onely to contumelie and despise, which the Law seeketh by all meanes to repress, for that thereby charitie betwene man and man is violated, and the peace of the Common wealth is many times broken and disturbed.

The proceeding in these causes in the Civile Law was of two sorts: for it was either *ad publicam vindictam*, or else, *ad privatum interesse*, as the partie injured made his choice thereof.

Ad publicam vindictam, was when the partie Diffamed, sought to have the Diffamer recant his words, or to undergoe some open and infamous punishment for his rash and malicious speeches, whereby it might be publicly knowne abroad that he did the other wrong.

But *Ad privatum interesse*, was when hee sought not the recalling of the slanderous speeches which were given out against him, but esteemed his credit at some great rate (as that hee would not for a thousand pounds; or more or lesse quantitie according as the worth and calling of the person is, have had such speeches gone out of him) and so seeks to have his credit valued by recompence in money, as the Judge or Jurie, upon prooffe of his worth and place, shall esteeme it, and rate it. In these actions, hee that sued *ad publicam vindictam*, and had followed so farre, as that he had brought in to a Recantation or a publike disgrace, could not have recompence of his credit by money, save onely in case of commutations neither hee that had got his credit valued by money, could have a publike disgrace

*ff. ad L. Cornelia-
am l. in confi-
tutionibus. S.
ulr.*

*ff. de verborum
obligation. l. si-
pulationum S.
planè.
ff. de re judicat.
L. si quis ab alio.*

also

also inflicted for his satisfaction, but what way hee had cholen, with that he must have rested contented, for that irefull mens wraths otherwise would never have beene satisfied, and the prosecution of these actions otherwise would be confounded.

These two kindes of proceedings the Princes and Sages of former ages seeme to have sorted to the two kindes of Jurisdiction that are amongst us, the one Spirituall, the other Temporall: and therefore the Law of the Land it selfe saith, in a cause of Diffamation, when money is not demanded, but a thing done for punishment of sinne, which is all one, as when the Civilians say, when it is done *ad publicam vindictam*, it shall be tryed in the Spirituall Courts: whereupon by argument of contrary sense it followeth, that where the punishment of sinne is not required, but amends in money is demanded, there it is to be tryed in the Temporall Court, for the Law would that every man should have his remedie agreeable to reason in what sort him best liketh. And therefore be the fault what it may be, that the words of the Diffamation do sound unto, as long as it stands but in words, and the partie doth not take upon him to justifie the matter that is comprised under those words, and doth seeke but for the punishment of the slanderous words onely, so long it is to be tried at the Spirituall Law; for the Law speaketh in generall in cases of Diffamation, where punishment of sinne onely is required: so that where a man is called Traitor, Felon, or murtherer, or any other crime belonging unto the Common-Law, being every one of them words of great diffamation, so the partie therein seeke punishment onely, and not his private interest, there the Spirituall Law is to hold plea thereof. For where the Law doth not distinguish, there neither ought wee to distinguish: but the Law hath said in generall, that causes of Diffamation, whose prosecution is thus qualified, do belong unto the tryall of the Spirituall Law: and therefore even those cases before remembred where the partie followeth this kinde of prosecutions, ought by that

that Law to belong unto the Spirituall Court, as on the contrarie side, Spirituall causes of Diffamation being propounded to a pecuniarie end ought to be ordered in a Temporall Court, *Story and benard*

But where any man takes upon him to justifie the crime that hee hath objected, there either Court is to hold plea of the crime that properly belongeth to that Court, for that now words are no longer in question, but matter is in tryall, whether the partie diffamed hath indeed committed that offence that he is charged withall or no; which can be tryed in no other Court, than in that to which it doth properly appertaine. And that this was the course anciently held in matters of Diffamation betweene the Ecclesiasticall and Common Law, it is manifest by the Statute of 2. of Edward the 3. chapter 11. where although the Statute taxeth the perverse dealing of such, who when they had beene indicted before the Sherifes in their Returne, and after delivered by Inquest before the Justice of the Assise, did sue the indictors in the Spirituall Court, surmising against them that they had diffamed them, and therefore in that case forbad the like suits; for that justice thereby was hindered, and many people were feared to indict Offenders: yet that Statute plainly sheweth that in all other cases of Diffamation rising out of Temporall crimes beside this, the Ecclesiasticall Law had the cognisance: and that this was forbidden, it was not for that words of this nature, could not be censured at the Ecclesiasticall Law, when punishment of sin onely is required, but for that it was not that those things, which had beene once ordered in one Court, should be called againe to examination in another: and therefore the generall proceeding in matters of Diffamation, is not there prohibited, but the particular crossing of matters after judgement is there reprehended.

So that the distinction whereof I formerly spake, which taketh upon it to determine when a case of Diffamation is of the Temporall cognisance, and when of the Ecclesiasticall, cannot here take place: for that it is contrary to

2. Edw. 3. c. 11.

the former Statute or Decree that divided these cases into Temporall or Ecclesiasticall cognisance by the varietie of the prosecution thereof, and that it is contrarie to the ancient practise that hath confirmed this prosecution in either Court, but especially in the Ecclesiasticall Court, which hath still holden the triall of such Diffamations wherein sin hath bin only sought to be punished, untill now of late, that men have stept over the bankes, of their authority and confounded either Jurisdiction with the promiscuous acts one of another; when as the Statute it selfe is plaine, that the Authors of this Statute or Decree, whether soever you call it, which set these bounds to either Law, in proceeding upon matters of Diffamation, respected not so much the qualitie of the crime, upon which the Diffamation grew, as the manner of proceeding therein, ayming in the one at publique vendict, which is to be sought out of the Ecclesiasticall Law, and in the other at private interest, which is to be had out of the Temporall Law.

Neither is an Action of Diffamation, a matter of so light esteeme or qualitie, (a mans fame or good name being in equal balance with his life) as that it should be drawne away to be attendant on any other action that is of smaller weight or importance than it selfe is: for this is one of those Actions which for the speciall preheminence thereof, are called *ACTIONS prejudiciales*, that is, such that draw smaller causes unto them, but themselves are drawne of none other, but such as are like principall, or greater than themselves are. So that unlesse the manner of proceeding bring these causes under the compasse of the Common Law, in such fort as I have before shewed, the coupling of them with another matter of the same Law, will hardly bring them under the triall thereof: for that there be few actions greater then it selfe is, so that if the crime be Ecclesiasticall, howsoever it toucheth a Temporall cause, the tryall shall be still at the Ecclesiasticall Law. And the same that I say of Diffamations rising out of Ecclesiasticall crimes, I hold also to be true in Diffamations springing out of Temporall

Temporall crimes, where punishment is required for the offence committed, and amends in money is not demanded, unless happily that grow of penance injoyed, which the offender will redeeme by giving money to the Judge, or to the partie grieved. And this I take to be a farre better limitation for either Law, having the ground of the Civile Law, and a Statute of the Common Law, and common reason it selfe for it, than the other diuise is, which so distinguisheth this businesse, as still it makes it rest in the mouth of the Judge, which cause of Diffamation is meere spiritual, and which not, which were not to be done if there were cleare dealing in the matter: for Lawes are so to be made, as that as little as may be, be left to the discretion of the Judge, but all be expressed as farre as the nature of the cause will give leave: which albeit it be hard to doe, for the varietie of the cases that every day happen, never thought on before, yet that is to be laboured so farre as may be; for this libertie of leaving many things to the Judges discretion, is many times great occasion of confusion in Judicature, saying sometimes this, and sometimes that, as his private humor shall lead him: and therefore a plaine distinction betweene both the Lawes were best, that every man may see, and say what is proper to either of them.

SECT. 2.

That the suits of Bastardie, as well in the principall as in the incident belongs unto the Ecclesiasticall Law.

And thus farre as concerning matters of Diffamation. Now followeth that I speake of matters of Bastardie.

Bastardie is an unlawfull state of birth, disabled by divine and humane Lawes to succeed in inheritance.

Of Bastards, some are begot and borne of single women, (in which ranke also I put widowes) some other of married women.

Of single women, some are such as a man may make his wife, if himselfe be sole, and unmarried, as those that are kept as Concubines in place of a mans wife; some other are such as a man cannot make his wife, although himselfe be sole and unmarried; for that either they are already pre-contracted to some other, or that they be in so neere a degree of affinitie or consanguinitie one to the other, that the marriage would be damnable, & the issue thereof unlawfull.

Of such as are begotten of single women, by single men, who are in case to marrie them if they will, some are called by the Civile Law *Filii Naturales*, because they were begot by such as they held for their wives, and yet were not their wives, who might be legitimate by sundry waies, as hereafter shall be shewed.

Some other begot of single women, if they were begot in vage lust, without any purpose to hold such a one for a Concubine, but upon a desire only to satisfie a mans present lust, whether they were begotten by married men or single men, were called *Spurii*, vvhich for the most part are putative children, and their father is not otherwise knowne then by the mothers confession, vvhich sometimes saith true, sometimes otherwise. *Isidore* saith, they vvere so called because they were borne out of puritie; for that such kinde of lust is contrary to holy Matrimonic, whose bed is undefiled, and therefore the other is corrupt, and abominable.

But where any was borne of a woman single or married, that prostituted her selfe to every mans pleasure, and made publike profession of her self to be an harlot, (such as they are whom the Law calleth *Storae*) these were called *Manzeres*.

Those which were begotten of married women were called *Nothi*, because they seemed to be his children whom the marriage doth shew, but are not, no otherwise than some feavers are called *Nothi*, that is, bastard feavers, because they imitate the tertian or quartan Feaver in heat, and other accidents, but yet are neither tertians nor quartans, as the learned

learned Phisicians well know : but these are counted so to bee bastards, if either the husband were so long absent from his wife, as by no possibility of Nature the childe could bee his; or that the Adulterer and Adulteresse were so knowne to keepe company together, as that by just account of time, it could not fall out to be any other mans childe but the Adulterers himselfe : and yet in these very cases within this Realme, unlesse the husband be all the time of the impossibility beyond the Seas, the Rule of the Law holds true, *Pater is est quem nuptia demonstrant.*

The most nefarious and last kinde of Bastards are they whom the Law calleth *Incestuosi*, which are begot between Ascendents & Descendents, *in infinitum*, and betweene Collaterals, so farre as the Divine Prohibition and the right interpretation thereof doth stretch it selfe.

The effects of these sorts of Bastardies are divers.

First, it staineth the bloud, for that hee that is a Bastard can neither challenge Honour nor Armes from the Father or Mother, for that he was begot and borne out of Matrimony, which is the first step to Honour : and therefore the Apostle calleth Marriage honourable, whereupon it must follow, that the opposite thereof is shame; for, albeit it bee no sinne for a Bastard to be a Bastard, yet is it a defect in him to be such a one, and a thing easily subject to reproach.

Heb. 13. 4.

Secondly, it repelleth him that is a Bastard, from all succession, descending from the Father or the Mother, whether it be in Goods or Lands, unlesse there bee some other collaterall provision made for the same : for that all such Lawes and Statutes as are made to any of these purposes, were intended to the benefit of such as are legitimate, and are next of kin by lawfull succession, and not by unlawfull conjunction.

To legitimate him that was a Bastard, when there could no claime be made unto his birth-right but by grace, among the *Romans* were sundry wayes; first where the Father of the Bastard (they being both single persons) married the woman, by whom he begot the child; secondly, where the fa-

ther did by his last Will and Testament, or by some publick instrument subscribed by witnesse, name him to be his naturall and lawfull sonne, or simply his sonne, without the addition of any of these two words, base, or naturall, and therewithall did make him his heire, which could not be, but in such cases onely, where the father had no other naturall and lawfull childe left alive.

Thirdly, whereas the Prince by his Rescript, or the Senate by their Decree, did doe any one that credit, as to grant them the favour of legitimacion, which was done, for the most part, in such cases onely, where either the father of the childe, or the childe himselfe, offered himselfe to be attendant on the Court or Prince.

In this Realme, none of the foresaid legitimacions take place, as farre as I can learne, but onely that which is done by Parliament, and that very rarely; for besides those that King Henry the eighth did in the variety and mutability of his minde, towards his owne issue, I thinke there cannot be many examples shewed: for, as for that which is wrought by subsequent Marriage, being a thing anciently pressed by the Clergie of this Land, to be admitted in like sort, as it is used in other Lands, where the Ecclesiasticall Law taketh place; it was rejected by the Earles and Barons with one voyce, and answer was made, that they would not change the Lawes of the Realme in that point, which to that time had bene used and approved. All these cases of Bastardie in other Lands, whether they be such, or not such, are triable by the Ecclesiasticall Law: But here with us it is questionable, to what Law, and how farre they doe appertain, whether to the Ecclesiasticall or Temporall.

For the matter of Bastardie, what it is, the Ecclesiasticall Law, and the Temporall differ not; but there is a diversitie betweene them in the prosecution thereof, for the Ecclesiasticall Law bringeth it two wayes in Judgement; the one incidently, the other principally; but the Common Law maketh two sorts thereof, the one generall, the other speciall: But first of the Ecclesiasticall division, then of the Temporall.

Bastardie

28.8. cap. 7.

1. Mar. 1. parli-
ament. cap. 1.

Bastardie is then said to be incidently propounded, when it is laid in barre of some other thing, that is principally commenced; as when one sueth for an inheritance that he pretendeth is due unto him by his nativitie, an other crosseth him therein, by objecting against him bastardie, with purpose to exclude him from his action in the inheritance: here the barre is in the incident, because it comes exclusively to the action of inheritance, but the action for the inheritance it selfe was in the principall, for that it was begun in consideration of the inheritance, and not with intent to prove himselfe legitimate; which happily hee never dreamed of, when he first entered his action for the inheritance. In which case, he which is charged with the bastardie, may require himselfe to be admitted to prove himselfe legitimate, before the Ecclesiasticall Judge, and to bee pronounced to be such a one, *Ad Curiam enim Regiam non pervinet agnoscere de Bastardia*: Against which the Law of the Land doth not oppose it selfe, but acknowledge it to bee the right of the Church. And yet to avoidall subtil and surreptitious dealing in this behalfe, it hath set downe a warie and cautelous forme of proceeding, by which the same shall be brought unto the Ordinarie, and such as have interest in the suit, may have notice thereof, and time to object in forme of Law against the proofes and witnesses of him that pretends himselfe to be *Mulier*, if they so thinke good: and what shall be certified herein by the Ordinarie, as concerning the nativity of him that is burthened to be a Bastard, (that is, whether hee were borne before or after his Parents marriage) shall be supplied in the Kings Court, either by judging for, or against the Inheritance.

But Bastardie is then taken to bee principally propounded, when either one finding himselfe to be greeved with some malicious speech of his adversarie, reproaching him with Bastardie, or himselfe fearing to be impeached in his good name, or right, doth take a course to cleere his nativitie, by calling into the Law, him or them by whom hee is reproached, or feareth to bee impeached in his right and credit,

Glawvill lib. 7.
cap. 13.

9. Hen. 6. ca. 12.

Glawvill lib. 7.
cap. 15.

credit, to see him, to prove himselfe legitimate, and to alledge & object against it, if they ought have, or can have to the contrary: which if either they doe not, or doing to the utmost what they can, can bring no good matter against his prooffe, but that it stands still good and effectually in Law, to all intents and purposes whatsoever (although perhaps hereby hee shall not be able to carry the inheritance, both for that it appertaineth not to the Ecclesiasticall Law, to judge of Lands, Tenements, or Hereditaments ; and also for that there is a precise forme set downe by Statute, how suits of this nature shall be recovered) yet if no opposite or contradicter appeare herein, and the suit was onely taken in hand against such, as either openly reproached him, or secretly buzzed abroad slanderous speeches, as concerning his legitimation : it is not to be doubted, but by an accident also it will be good for the inheritance it selfe, for where a mans legitimation is sufficiently proved, thereon followeth all things which naturally thereto belong. But if any man urge the forme of the Statute, being intercessed therein, then must it necessarily be followed, for that otherwise it would be thought, all that was done before, so farre as it may concerne the inheritance, although it were but in a consequence, were done by collusion. This kinde of proceeding hath been much more in use in former times than it is now, and never any opposition made against it : but now it goeth not altogether cleere without contradiction, as many other things are offensively taken, which notwithstanding have good ground, and sufficient warrant for them.

And so farre as concerning the Ecclesiasticall proceedings in this businesse : Now to the Temporall sorts of them.

Generall Bastardie is so called, because it comes in incidently, and is in grosse objected against some that sue in a matter principall, to disappoint his suit. This suit, because it is of the Ecclesiasticall cognisance, it is sent by the Kings writ to the Ordinarie, with certaine additions for more perspicuity of the inquirie thereof ; as that whether he that is charged with the Bastardie, were borne in lawfull Matrimonie,

monie, or out of Matrimonie, or whether he were borne before his Father and Mother were lawfully contracted together in Matrimony, or after. All which the Ordinarie makes inquirie upon by his owne Ordinarie and pastorall authoritie; for that matters of Bastardy doe originally belong to the Ecclesiasticall Court, and not to the Temporall: And as hee findes the trueth of the matter by due examination to bee this, or that, so hee pronounceth for the same in his owne Consistorie, and makes certificate thereupon to the Kings Court accordingly; and as hee pronounceth, so the Temporall Judges follow his sentence in their Judgements, either for, or against the Inheritance that is in question.

*Lib. Intrac.
fol. 35.*

Speciall Bastardy they say is that, where the Matrimony is confessed, but the priority or posterioritie of the Nativitie of him whose birth is in question, is controverted; which to my thinking, if I conceive aright, is no other thing than the generall bastardie, transported in words, but agreeing in substance & matter with the other: for even these things which they pretend make speciall Bastardie, are parts and members of the generall Bastardie, and are either confessed or inquired upon by vertue of the Kings writ in the same: For first for the Matrimonie that is here mentioned, it is there agnised both by the Plaintife in pleading of it, and the Defendant in the answering thereto, and therefore the Plaintifes plea is thus; Thou art a Bastard, for that thou wast borne before thy parents were lawfully contracted together in Marriage, or before their Marriage was solemnized in the face of the Church: To which the Defendants reply is, I am no Bastard, for that I was borne in lawfull Matrimony, or that I was borne after that my Father and Mother were lawfully married together: In both which you see, there is a Marriage confessed, and the question onely is of the priority or posteriority of the nativitie of him that is charged withall, whether it happened before, or after his parents marriage, which, as they hold, is the other member of speciall Bastardie: and yet this

Bracton.

Lib. Intrac.
fol. 35.

Glanvill lib. 7.
cap. 15.

prioritie or posterioritie of nativity, by vertue of the Kings writ, comes no lesse in inquirie to the Ordinarie in the case of the generall Bastardie, than they make it to be traverstable in the speciall Bastardie; and therefore the writ to the Ordinarie for generall Bastardie, is conceived in this manner: *viz. Inquiratis utrum predictus A. pars rea, generis vel natus fuit ante Matrimonium contractum inter talem Patrem suum, & talem Matrem suam: vel post.* So that either they must confesse there is no such bastardie, as they make shew there is, diverse from that that is tried before the Ecclesiasticall Judge, or that themselves doe confound the members that should dividethe same, and make them one, or the other, as them list; for both simply they cannot be, unlesse they be distinguished with other notes and differences, than hitherto I finde they are. But to say the truth, if these things be well weighed and considered, speciall Bastardie is nothing else, but the definition of the generall, and the generall againe is nothing but the definite of the speciall: for whosoever is born out of, or before lawfull Matrimonie, hee is a Bastard, and he againe is a Bastard that is borne before, or out of lawfull Matrimony, so that these things to bee a Bastard, and to bee borne out of lawfull Matrimony are convertible one with the other: so then as it were very hard to make a divorce betweene these things that are so neere in nature one to the other, being convertible termes one to the other; so hard againe it were in policie to disjoyne these things in triall, that are so neere in affinity one to the other, because they are the same in substance and nature as the other are, and therefore *Eodem jure censeri debent*; And also *ne continentia causarum dividantur*, which is no lesse absurditie in Law, than it is a grossenesse in other learning, to deny a principle, or generall Maxime of the profession.

22. q. c. 2. cog-
no. 1. 1. 1. 1.

And so farre hitherto as concerning the reasons and arguments, that may be brought against this speciall Bastardie. Now it resteth that I shew by ancient precedents, that both these sorts of Bastardy have appertained to the Ecclesiasti-

call

call Courts onely, and the first precedent is in the incident the other in the principall : and the precedent is no lesse ancient than *Henry* the seconds time, as that which happened under *Alexander* the third, about the yeare of our Lord 1160. and the case is this.

A certaine man of *Normich* Diocesse called *R. H.* had issue *I. H.* who had a Son called *C. H. J. H.* decessing before *R. H.* his Father, *C. H.* succeeded in his Grandfathers Inheritance, his said Grandfather being dead ; but *M. H.* Brother to the said Grandfather, pretending that the said *I. H.* was a Bastard, draweth the said *C. H.* into the Temporall Court upon the Inheritance ; whereupon *C. H.* called the said *M. H.* into the Bishop of *Normich* his Court, for the triall of his nativity ; but the Bishop long protracting the cause, *C. H.* appealed to the Pope, who delegated the same cause to the Bishop of *Excester*, and the Abbot of *Hereford*, with order, That if the said *M. H.* should not within two Moneths, prove that which hee objected against *C. H.* that then they should intimate the same to the secular Judge, before whom the inheritance was in question, that he should not stay any longer upon the question of legitimation, but proceed to Judgement in the cause of the inheritance. Which president, though it be long before the Statute of Bastardie, made by *Henry* the 6. and so no writ went from the Temporall Court, for the certificate thereof : yet it shewes, that the Temporall Judges in those dayes did not proceed to Judgement in the principall cause, before the incident were decided by the Ordinarie ; and that they counted bastardy then to be of the Ecclesiasticall cognisance ; and that it was lawfull for him that was pretended to be a Bastard, to appeale from his Ordinarie, if either the Ordinarie detracted the determination thereof, or were suspected of partiality.

And thus farre of the incident. There is an other much like precedent to this in the same Kings dayes, but that is in the principall, for that the inheritance came not first in question, but the legitimation it selfe, and the case is as followeth. A certain man called *Ralph*, kept one *Analine*, the wife

Cap. Labor. ext.
qui filius sumus
legitimus.

*Cap. Causam.
ext. qui filii
sunt legitimi.*

of one *Allin*, by whom he was supposed to have begot one *Agatha*, who also being married, had a Sonne called *Richard*; *Ralphe* going beyond the Sea, left *Richard* and his Mother *Agatha* in possession of all his goods and lands; but newes being after brought, that the said *Ralphe* was dead beyond the Sea, *Francis* the Brother of the said *Ralphe*, spoyled the said *Richard* of the possession of all the goods and lands he had of the said *Ralphe* his Grandfather, for that he did pretend the said *Agatha* his Niece, and Mother of the said *Richard* was not borne of lawfull Matrimonie, so that neither shee her selfe, nor her sonne ought to succeed the Brother of the said *Francis*, but that the inheritance thereof did belong unto himselfe: whereupon the said *Richard* being thus spoyled by *Francis* his great uncle, obtained Letters of restitution to the Bishop of *London*, the B. of *Worcester*, and the B. of *Excester*, under this forme: That before they entred into the principall cause, which was this, Whether the said *Agatha* were borne in lawfull Matrimonie, or not, they should restore the said *Richard* to his Grandfathers inheritance. But the Bishop of *Rome*, after understanding by the said Delegates, that the plea of inheritance within this Realme, did not belong unto the Church, but unto the King, recall'd that part of his rescript, which concerned the restitution of the said *Richard* to his inheritance, and gave order to the foresaid Bishops, to proceed in the cause of legitimation; willing them to inquire, whether the said *Agatha* were borne of the said *Aneline* in the life time of her husband *Allin*, & when she dwelt and cohabited with him, as with her husband; or whether the said *Ralphe*, Father of the said *Agatha*, kept the said *Aneline* openly and publickly, while the said *Allin* yet lived; And if they found it to be so, then they should pronounce her the said *Agatha* to bee a Bastard, for that *Aneline* her Mother could not bee counted to bee a wife, but a whore, which defiling her husbands bed, presumed to keepe company with an other, her husband yet being alive: But if they found it otherwise, then they should pronounce her, the said *Agatha*

gatha to be legitimate. All which was done after the death of the said *Ralph* and *Aneline*, as the Decretall it selfe shewes: Neither was there any authoritie that opposed it selfe against that proceeding, but held it to be good and lawfull, though it were in terme of speciall Bastardie, for then that which they now call speciall Bastardie, was not borne. Besides hereby it appeareth, that the Ordinaries then did not onely proceed in cases of Bastardie incidently, that is, when a suit was before begun in the Common Law, upon a triall of inheritance, and that by writ from the Temporall Courts, but even originally, and that to prepare way unto inheritance, or any other good that was like to accrue unto a man by succession, or to avoid any inconvenience that might keepe him from promotion, as may appeare by this practise following.

Priests in the beginning of the Raigne of *Henry* the 3. yet married secretly, and their children were counted capable of all inheritance, and other benefits that might grow unto them by lawfull marriage, so that they were able to prove that their parents were lawfully married together by witnesses, or instruments: which many children did, either upon hope of some preferment, that by succession or otherwise was like to come unto them, or to avoid some inconvenience that otherwise might light upon them for the want of that prooffe, some their parents yet living, others their parents being dead, and the proceedings before the Ordinary was holden good, to all intents and purposes, even in the Common Law, for otherwise they would not have so frequented it: for as yet there was made no positive Law against marriages of Priests, and Ministers, but the Church of Rome then plotting against it, (for that by that they pretended the cure of Soules was neglected, and the substance of the Church wasted and dissipated,) did by *Otho* then Legate à *Latere* to *Gregory* the ninth order by a Constitution, that all such Ministers as vvere married, should be expelled from their Benefices, and their Wives and Children should be excluded from

*Constitut. Otho.
innotuit de ux-
oratis à beneficio
amovendu.*

all such livelihood, as the Fathers had got during the time of the Marriage, either by themselves, or by any middle person, and that the same should become due unto the Church, wherein they did reside, and that their children frō that time forth should be disabled to enjoy holy orders, unless they were otherwise favourably dispensed withall; which Constitution although it wrought to that effect, to barre Priests for that time of their Marriage, untill the light of the Gospell burst out, and shewed that that doctrine was erroneous, yet to all other effects, the proceeding in the case of Bastardie stood good as a thing due to be done by holy Church. And therefore *Linnod* comming long after, in his Catalogue that hee maketh of Ecclesiasticall causes, reciteth Legitimation for one among the rest, for that in those daies there was no dispute or practise to the contrarie.

And thus farre as concerning those things wherein the Ecclesiasticall Laws are hindered by the Temporall in their proceedings contrary to Law, Statute, and custome anciently observed, which was the third part of my generall division. Now it followeth that I shew wherein the Ecclesiasticall Law may be relieved, and so both the Lawes know their owne bounds, and not one to over-bear the other as they doe at this day, to the great vexation of the subject, and the intolerable confusion of them both, which is the last part of this Treatise.

PART.

P A R T. I V.

CHAP. I.

S E C T. I.

The meanes how to relieve the Civill Law : that they are of two sorts : that two things are required to the first meane, and that the former of these is the right interpretation of Lawes, and what that is.

He meanes therefore to relieve the profession of the Civile Law are two. The first is, by the restoring of those things which have beene powerfully by the Common-Law taken from them, and the bringing of them backe againe unto their old and wonted course : The other is by allowing the practise of such things as are grievances in the Commonwealth, and fit to be reformed by some Court, but yet are by no home Law provided for.

The first of these stands in two things, whereof the one is the right interpretation of the Lawes, Statutes and customs which are written, and devised in the behalfe of the Ecclesiasticall Law. The other consisteth in the correcting and supplying of such Lawes and Statutes that are either superfluous or defective in the penning, made in the behalfe (as it is pretended) of the Ecclesiasticall profession, but yet by reason of the unperfect penning thereof, are construed for the most part, against them.

The right interpretation of the Law, Statutes, and Customs pertaining to the practise, standeth as is pretended in the Judges mouth, who notwithstanding hath that authority from the Sovereigne, and that not to judge according as him best liketh, but according as the right of the cause doth require.

The

The supply or reforming of that which is over-plus, or defective, is in the Parliament, so notwithstanding as that the Prince evermore breatheth life into that which is done.

Lawes, Statutes or Customes, are then best interpreted when as the very plaine and naturall sense of them is sought after, and no forraine or strained exposition is mixt with them; for that turneth justice into worme-wood, and judgement into gall: then that the Judge be not too subtil in his interpretation, but follow such exposition of the Lawes, as men of former age have used to make, if they be not plainly absurd, and erroneous, for oft shifting of interpretations breedeth great variance in mens states, among such as have busie heads, and much discrediteth the Law it selfe as though there were no certaintie in it: with which although the sage Judges of our time cannot be charged, for ought that I know, yet (I cannot tell how) men much complaine that Lawes are farre otherwise construed in these daies, than they were in former ages: which as it is an ordinarie complaint in the Temporall Courts, so it is not without cause, much lamented at the Spirituall Court, where the interpretation upon the three Statutes of Tythes made by King *Henry* the eight, and *Edward* his sonne, among other inconstancies of other Lawes, hath such great varietie of sense and understanding in sundrie points thereof, as that if the makers thereof were now alive, and the first expositors thereof sate in place of Judgement againe (the Statutes being measured by the interpretation they now make of them) vould hardly acknowledge them either to be the Statutes that they then made, or the other did after expound, and declare: for every of these Statutes and the sense that was given of them, vvas wholly for the benefit of the Church, according to the tenor thereof, but as they now receive explication,, they are not onely not beneficiall unto the Church, but the greatest hinderance to the same that may be; for the words are made to jarre with the sense, and the sense vvith the vvords, neither is there kept any right analogie in them: and therefore the Reve-

ren.

rend Judges are to be intreated (because they challenge unto themselves the opening of the Statutes alone, albeit peradventure that be yet *sub iudice*, where the Statute of Ecclesiasticall causes is to be interpreted) that they would recall such exorbitant interpretations, as have of late gone abroad upon these Statutes, and restore them to their ancient sense, and understanding. No man can so cunningly cloake an interpretation, but another will be as cunning as hee to spie it out, and then the discredit will be the Lawes. *A small error* (saith Aristotle) *in the beginning, is a great one in the end, and hee that goeth out of the way a little, the longer he goeth on, the further he is off from the place his voyage was to:* and therefore the speedier returne into the way againe is best. The old Proverbe is: *He that goeth plainly goeth surely*, which may be best verified in the exposition of the Law, if any where else; for commonly men offend no where more dangerously than under the authoritie of the Law, and therefore one saith very well, that *There are two salts required in a Judge, the one of knowledge, whereby hee may have skill to Judge uprightly; the other of conscience, whereby hee may be willing to Judge according to that as his skill leadeth him unto:* both which being in the grave Judges, it is not to be doubted, but they will be easily induced to review their owne, and their predecessours interpretations, and reduce such exorbitant expositions as have escaped out thereof unto the right and naturall sense thereof: which if perhaps they shall be loath to do, for because it makes for them, or for some other like partiall respect, then humble supplication is to be made unto his Majestie, that hee himselfe will be pleased to give the right sense of those things which are in controversie betwene both the Jurisdictions: for his Majestie by communicating his authoritie to his Judge to expound his Lawes, doth not thereby abdicate the same from himselfe, but that hee may assume it againe unto him, when and as often as hee pleaseth. Whose interpretation in that is to be preferred before theirs, first for that his interpretation is impartiall

Lib. I. politic.

*L. 1. num. 8. C.
de legibus.*

*L. 1. num. 17. C.
eod. l. omnes po-
puli ff. de iustit.
et iure.*

as hee that will not weaken his left side to make strong his right (for so are these jurisdictions as they are referred unto his politique bodie) but will afford them equall grace, and favour, that hee may have like use of them both, either in forraigne or domesticall businesse, as occasion shall serve: then that his Judges interpretation maketh right onely to them betweene whom the cause is, but his highnesse exposition is a Law unto all, from which it is not lawfull for any subject to recede, neither is it reverseable by any, but by himselfe, upon a second cogitation; or him that hath like authoritie as himselfe hath: and therefore most fit to be interposed betweene Jurisdiction and Jurisdiction, that the one partie be not Judge against the other in his owne cause, which is both absurd and dangerous.

And let this suffice for the right interpretation of Lawes and Statutes: Now it followeth that I speake something of the supplies that may be made to the defects that are in the same.

SECT. 2.

The second thing required to the first correcting of superstition, and supplying of defective Statutes.

IT is not to be doubted, but it was the full minde and intent of the Lawmakers, which made those three Statutes to infeoffe the Ecclesiasticall Courts in the inheritance of all those causes that are comprised in those Statutes, save those that are by speciall name exempted, and that they did by the said Statute, as it were deliver unto them full and quiet possession of the same, for even so sundrie branches of the said Statute do shew, as I have elsewhere made it manifest: and that there hath growne question upon many points thereof; and that the professors of the Ecclesiasticall Law have beene interrupted in the quiet possession thereof, commeth of the unperfect penning of the same, and not of any just title or claime that may be made by the professors of the other Law thereunto: but this is a thing

not onely proper to these three Statutes, but also common to all other Statutes which are writ of any Ecclesiasticall causes within this Land; which notwithstanding may be remedied, if it seeme good unto his sacred Majestie and the rest of the wisdom of the land assembled together at any time for the making of wholsome Lawes, and the reforming of the same, by supply of a few words in some places, or periods that are defective, and yet keeping the true meaning and sense of the same.

As for example in the Statute of the two and thirtieth of *Henry* the eight, in the § wherefore, neere the beginning of the same Statute, the Statute ordering, that all persons of this Realme, and other of the Kings Dominions shall truly, and effectually set out, and pay all and singular Tythes, according to the lawfull customes, and usages of the Parishes where they grow, and become due: because there is a question made where these customes and usages shall be tryed, in the Ecclesiasticall or Temporall Law; if these or the like words had bene added to the same (to be proved before an Ecclesiasticall Judge after the forme of the Ecclesiasticall Law, and not eliewhere) the whole matter had bene cleare for that point.

And whereas againe in the end of the same Statute, there be some good words tending to the appropriating of these matters of Tythes, and obligations, and other Ecclesiasticall duties to the Ecclesiasticall Court: and that the remedie for them shall be had in the Spirituall Court according to the ordinance of the first part of that Act, and not otherwise: yet because there is no penaltie to that act, busie men easilie make a breach thereinto, for that Lawes without penalties, for the most part are weake & of no force: if therefore this or the like supply were made (if any man sue for these, or like duties in any other Court, than in the Kings Ecclesiasticall court, the parties so suing, to forfeit the treble value of that which he sued for, to be recovered in the Kings Ecclesiasticall Court, where it ought to have bin commenced, by the way of Libells, or Articles, the one halfe thereof shall

be to the King, the other to the partie grieved) many of these suits would easily be met withall. Neither is it to the purpose that this is matter of mony, and Lay-Fee that should be in this sort forfeited, and therefore is not Regularly to be sued for in the Ecclesiasticall Court; for seeing the cause is Ecclesiasticall, upon which the matter of forfeiture ariseth, it may be very well allowed, *Ne contentia causarum dividantur*: and for that ordinarily every jurisdiction that is wronged may defend it selfe with a penaltie: beside, we do by the like right in the Ecclesiasticall courts recover expenses of suits in Law, fees of Advocates, & Proctors, & mony for redemption of sin, so that it will be no strange matter to have this kinde of suit allowed unto the Ecclesiasticall Court.

Further, whereas there are in the Statute of Edward the sixth, chapter 13. in the beginning almost of the said Statute two clauses under pains of forfeiture, one of treble value, for Tythes carried away before they were divided, set out, or agreed for: The other of double value where the Tythes were hurt or impaired by the partie stopping or letting him that had interest thereunto to carrie them away, or by withdrawing, or carrying them away himselfe; & the same is ordered by a clause in the second branch thereof reaching unto them both (for that a clause put in the end of two sentences, stretcheth it selfe indifferently unto them both, if there be no more reason it should belong to the one than the other, as there is not in this case, for if it were not so, the first penaltie had no order set down, how it might be recovered) that the same shall be recovered according to the Kings Ecclesiasticall Law: to which if there were added this word [only] and not elswhere, or other wise, and they martialled in their right places, there were nothing more sure or strong.

Moreover, whereas in the first proviso of that Statute it is decreed; that none shall be compelled to pay any manner of Tythes for any Hereditaments, which by the Lawes or Statutes of the Realme, or by any Priviledge, Prescription, or Composition Reall, are not chargeable therewithall; whereby it is doubtfull in what Court the said Exemptions

ons

ons are to be alledged : if there were inserted these words, or other of like nature [the said Lawes, Statutes, Priviledges, Prescriptions, or Compositions reall to be alledged, argued, traversed, and determined before the Ecclesiasticall Judge onely according to the forme of the Ecclesiasticall Lawes, and not else-where] upon like forfeiture of treble damages, as is aforesaid, it would make this poynt sure unto the Ecclesiasticall Law.

Over and besides this, whereas in the same Statute there is a discharge allowed to barren, heath, and waste ground, in some for not payment of tythes, in other for the manner of payment of them for the space of 7. yeares, after the improving and converting of them into arable ground or meadow ; it would make the matter plaine, which Law should have the pronouncing thereupon, if there were added these or the like words [So the same ground be proved in forme of Law in the Ecclesiasticall Court, to be barren, heath, and waste.]

Lastly, whereas in the said Statute among other limitations of causes, wherein the Ecclesiasticall Judge is not to deale by vertue of the said Statute, there is one in these words, neere the end of the said Statute [Ne in any matter whereof the Kings Court of right ought to have Jurisdiction] which limitation is so vage & large, that thereout there may be forged as many divers kindes of Prohibitions, as the Poets fained *Vulcan* ever made thunderbolts for *Jupiter*. And therefore it were very well and consonant to the good meaning of the said Statute, that this vageness were restrained and reduced to a more certainty of matter, by these or like words, [By any ancient Law or Statute of this Land.]

And so farre as concerning the imperfection of the said three Statutes, and how they may be amended and made reducible to the first meaning and intent of the makers thereof, by some small supply, alteration, or change of words, the sense and ground- worke standing ever the same, according to the wisdom of his Majestie, and his great Council assembled in Parliament.

CHAP. II.

SECT. I.

* *The second Meane to releve the Civile Law, which is, by allowing it the practice of such things as are greevances in the Common wealth, and fit to be reformed by some Court, but yet are not otherwise provided for: And first of the greevances which concerne Parents and Children, and how they may be releved.*

Now it followeth, that I shew wherein the practice of the Ecclesiasticall Law (under which I comprise the Civile Law, so farre as it is in use amongst us) may bee increased to the benefite of the subject, and the enlargement of the profession, without the prejudice of the Common Law. And that I may first begin with the piety of Fathers towards their Children, & children againe towards their Parents, which is the beginning of all Commonwealths; for even Nature it selfe hath taught that, not onely in the most brutish people that bee, but also settled it in the savagest kinde of beasts that are upon the earth, the one to cherish that which it selfe hath brought out, and the other to love againe that which hath brought it out: and yet, what
 * Law is here in *England*, which provideth for the one or the other, unlesse it be the Statute of the xliij. of *Elizabeth*? and that is but for poore folkes children onely (where otherwise they should be a burthen to the Parish) but for the Parents themselves, or other children that are cast off, either by the negligence, or the unnaturalnesse of the one toward the other, there is no provision at all. Yet by the Civile Law there is a purveiance made, whereby both the Father is compelled to acknowledge his childe, (if there bee any variance betweene the husband and the wife upon any jealousie or suspicion of Adulterie, if the same cannot be proved by the womans owne confession, by witnesses, by the

*ff. de agnoscend.
et alendi liberu
vel parentib.
c. de alendi li-
beru vel paren-
tib.*

the act it selfe, or some other violent presumption) and to nourish and maintaine the same; but if the fault appeare against her, and it be so sentenced by the Judge, then may he as well refuse the one as the other: but for other children upon whom there is no such doubt, the Parents may bee constrained to maintaine, clothe, and feed them, and to set them out a portion of their goods, so that either the State and facultie of the Parents will beare it, or the children have not deserved to the contrary, wherefore they should not in that sort be provided for. And as the Father in this sort is bound unto the Childe; so the Childe againe is obliged unto his Parents, to provide for their sustenance, so far forth as their abilitie will reach unto: for it is very unnatural, that the Parents should want, so long as the children have meanes to relieue them. In both which cases, if either the Parents refuse to admit of their children, or the children againe refuse to yeeld comfort unto their Parents, the Judge may interpose his authoritie, and injoyne each to maintaine other according to their ability, and as to his discretion shall seeme meet, which if any of them should deny to yeeld unto, the Judge may, by Distresse of their goods taken and sold to the value thereof, compell them to performe his order: and yet that onely in case of Maintenance, and not to discharge debts, wherein either of them stand bound unto their creditors.

A man here in *England* dying, and leaving his wife Executrix, shee after marrying, carrieth away all his State unto her second husband, who gives and spends thereof as him listeth, without any regard of the children of the first husband, (by whom all, or most of those goods came) insomuch, as many times those children when they come to age, and are to goe abroad into the world, they have nothing to begin the world withall, whereby many of them come to beggerie, and others to more fearfull ends (for Necessitie, as the Proverb hath it, is a hard weapon) neither is there any meanes in this Common-wealth to relieue this mischiefe, for ought I can learne: but by the Civile

*ff. de ventre in
spiciendo, susce-
piendoq; pariu.
ff. de officio pro-
consulis, l. ne-
quicquam §. de
plano.*

*C. De secundis
nuptiis tit. 111.*

Law there is very good remedy ; for by that Law, neither the woman surviving her husband, neither the man surviving his wife, having issue betweene them during the Matrimony, have the propertie of those goods, which either of them brought one to the other, and are left behinde by the defunct ; but the propertie is the childrens of the deceased, and the use or benefite his or hers only which doth survive, during his or her naturall life : which course if it were taken here in *England*, many poore fatherlesse and motherlesse Children would bee in better state than they are ; for then howsoever their present estate were hard, yet their future would be better, when they should be secured to enjoy their fathers or mothers right : neither could such men or women which marrie, or are married with persons of this sort, much complaine if this Law were established here, for so should they have, though not a perpetuity in an other mans state, yet a long and beneficiall fruition thereof, even so long as the partie, in whom they were interested did live : but for the returne thereof unto the right owners, the Law is so scrupulous, that if the husband or wife doe remarrie, it will have him that is to marrie the widow, bound with good suerties for due restitution of the defuncts part, unto the children of the former marriage.

S E C T. 2.

The Greevances which arise by Executors, and how they may be relieved.

AN other inconvenience there is in Executors in this Land, Cosen german to the former, which goeth altogether uncontrouled, whereby I ghesse there is no Law in this Land to correct it: and that is, the trifling of Executors in paying of Legacies and bequests, under pretence of debts unknowne, which they make shew they must provide for, upon danger of their owne indemnitie ; whereby many Legacies are never paid, but stand, as it were, suspended untill the day of doome. Against this abuse, the Civile Law hath

two remedies: One by exacting bond of the Executor, that he shall pay the Legacies without fraud or deceit, according to the will of the defunct; the other, that if he refuse so to do, then the Judge may put the partie complainant in the possession of that which is demanded: for it is not enough for the Heire or Executor to pretend a debt, to the end that hee may stay the Legacies, which the Testator hath given, in his hand, but he must make plaine and manifest unto the Judge, that there is such a debt owing, and that the suit thereupon is either already begun, or very like to be begun in very short time, without fraud or collusion, otherwise many of those pretences and threats may be vaine and elusory. And in case there be any such just cause of feare in deed, or there be any such suit in truth commenced upon the same, the Executor may secure himselfe by bond or suertie from the Legatorie, that in case the debt be evicted of him, he shall repay to the Executor what he hath received: wherein, although it may be said, it is safer for the Executor to secure himselfe by keeping the Legacie still in his hand, than to trust upon suerty or other caution, for that these provisions many times are fraile; yet since this kind of dealing is injurious to the Legatory, & the withholding thereof, for the most part, hath no honest defence, but is grounded upon deceit and covetousnesse, it were behovefull for the common-wealth, that such ill dealing were redressed: for so mens Wils, which are their last Ordinances, (than the which, Princes have granted no greater benefit to men, than that in their life time they may dispose how their goods shall bee bestowed after their death) shall have that end that the Testators themselves intended: which if they had known in their life time, their Executors would not have performed, they would never have put them in trust as they did. Besides, hereby the names of Executors which now are charged with manifold imputations, by the ill dealing of some, shall by this meanes be unburdened & restored unto their former credit, which was, to discharge the trust that by the defunct was reposed upon them: for the Will of the defunct cannot bee defrauded without great sin.

M m

An

L. 1. §. 1. 2. c. 3 ff. ut Legatum nomine capiatur.

L. hac autem ff. si cui plusquam per Legem salcidiam.

ff. de regulis iurum L. vani timor.

L. Nisi si dolo §. si Legatarius ff. si cui plusquam per legem salcidiam licuerit.

ff. Si quis omnia causa testamentum, L. nam facit testum, l. 4. ff. de heredib. instituend. l. paterfamilias §. 1.

An other mischief there is in Executors and Administrators, not onely uncontrollable by the Law of this Land, but rather allowed & justified by it; and that is, when they have once got the authoritie into their hands, and priced all at the lowest rate, they will sell away all at the highest price they can, and answer the poore Children, & Legatories, for whose good they were appointed Executors, at the value in the Inventarie onely, contrarie to all right and reason: for by the Law, an Executor is to sell nothing of those things which are left unto the Children, or Legatories, but such things onely, which by keeping cannot bee kept, or which being kept, will be chargeable to the inheritance: or otherwise the Testator were so indebted, that his state must needs be sold, for the satisfying of the Creditors: or lastly, that he himselfe ordered by his Will something should bee sold. But for such things as may be kept, and by keeping, will not be the worse, he ought precisely to preserve them, specially where the Testator hath bequeathed any thing in kind. And if he sell ought of those things which he ought not to sell, he may not sell it but by the decree of the Judge, interposed upon the same, and upon iust cause proved before him: wherein if it appeare after, the Judge was abused, by any false allegation and corrupt testimony, the sale is void; and the Minor, when he comes to his full age, or within 5. yeares after, may reverse & recover that which is thus sold by collusion, out of the hands of him, to whom it was sold, as being done against the authority of the Law. And that it may be better understood, how precise the Law is in this point, and what things it alloweth may bee sold without the decree of the Judge, & what not, I will set downe the words of the Law it selfe, speaking of Tutors and Governors of Pupils; whose place Executors & Administrators do supply, so far forth, as they have the tuition & governance of Minors, during their under-age, faithfully translated. And it is a law of *Constantine* the great, reproving a former law of *Severus* the Emperour, which gave leave to Tutors and Curators to sell away all the gold, silver, precious stone, apparell, & other rich move-

*ff. de reb. eorum
qui sub tutela
sunt sine decre-
to non alienan-
du, vel obligan-
du, tot. tit. & ibi
Bartol. in ru-
brica.*

*C. de admini-
strat. tutorum,
vel curatorum.
l. lex qua.*

ables the Testator had, and to bring the same into money, which turned greatly to the hinderance of many Orphans; whereupon *Constantine*, after he had first ordered, that nothing should be sold of the pearle, precious stone, naperie, utensels of the house & other necessary stufte & ornaments of the same, saith thus. Neither shall it be lawfull for them, (meaning the Tutors or Curators) to sell the house wherein the Father died, and the childe grew up, wherein it is woe enough to the childe not to see his Ancestours images not fastened up, or else pull'd downe. Therefore let the house, & all other his moveable goods still remaine in the Patrimony of the childe, neither let any edifices or buildings, which came in good reparation with the inheritance, ruine or decay by collusion of the Tutor: but rather if the Father, or hee whosoever the minor was heire unto, left any building in decay, let the Tutor both by the Testimony of the worke it selfe, and the faith of many be compelled to repaire it; for so the yearly rent will bring in more profit to the Minor, than the price of the things being deceitfully sold under-foot, will doe the Minor any good. Neither doth this Law onely make provision against Tutors, but also against immodest & intemperate women, which many times gage unto their new married husbands, not only their owne state, but even the state and lives of their children. Further, it crosseth the course of putting the childrens money to usury (notwithstanding anciently it was thought, therein consisted all the strength of the Patrimony) for that course is seldome long, scarcely continuall and stable, and that thereby many times the money being lost, the childrens state comes to nothing: and therefore his conclusion is, The Tutor should sell nothing, without the order of the Judge, saving the Testators over-worne apparell, or those things, which by keeping could not be kept from corruption, and such cattell as were superfluous. Whereby it appeareth, how carefull that age was, not to give way to Executors by sale of the Testators goods, to make gaine of the Orphans; neither is this age better than that; but that which was feared then, may bee

provided for now, by like authoritie as was then.

In this Land a man dying, leaving Legacies to his children, and his wife Executrix, or dying intestate, and shee taking administration, and in her second marriage bringing all her first husbands state, and her childrens portions unto her second husband, & then dying, there is no remedy against the second husband, to recover the said Legacies or portions due unto the children out of his hands, because he is neither Executor nor Administrator, and that he came not to those goods by wrong, but by the delivery of the Executrix, with whom he married: but yet by the Civile Law there is, and that by this claime, that the said goods came unto his hands, & that it is no reason, any should be made rich by my goods against my will: for Legataries have no action against any, as Administrators in their own wrong, or hinderers of the performance of the last Will of the deceased, but Executors onely, and they then alone, when the party having it, holds it by wrong, and not by lawfull delivery, which in this case is otherwise.

*L. si ex me ff. de
vulso creditu si
cursum petatur.*

By the Law of this Land, there is no provision to preserve the state of a prodigall person from spoile, which neither hath regard of time, nor end of spending, unlesse the Father provide for this mischief in his Will, or by some other good order in his life, but he is suffered to waste and spend his goods untill there be nothing left (as though the Prince and Common wealth had no interest in such a subject, to see hee did not waste his state, and abuse his goods) whereby many great houses are overthrowne, and many children whom the Fathers carefully provided for, never leaving raking and scraping all their life time, that their children after them might live in great plentie and abundance, come to great shame and beggerie. But the Civile Law hath remedie for it: for the Law counting such a man that is in this sort impotent in his deeds, howsoever he be otherwise sensible in his words, to be halfe mad, and to be a young man in his manners, how old soever otherwise he be in his yeares, sets a Curator over them for the preserving and well ordering of

*ff. de curatorib.
furioso, & alii
extra minores
dandi.*

of their state, no otherwise than if they were children, or mad men indeed, who so long have power over them, and their goods, untill they come to sane manners, to which if they once returne the Curators office ceaseth.

The like they do to a widow or sole woman which liveth riorously, having neither regard of her fame, nor of her state.

L. et mulieri. ff. cod.

I finde an old practice auciently used in the Ecclesiasticall Courts, for restraining Executors or Administrators for dealing covenously in an Executorship or Administratorship, when there are more Executors named in a Will, than one, or more Administrators deputed by the Ordinary in an Administration than one, which were well if it were recalled, and brought backe to his former use againe. For now, as things stand many times one capricious fellow named an Executor in a Will, or appointed Administrator by the Ordinary with some other well-meaning men, getting a start in this businesse of the rest, ingrosseth all into his owne hands, and without privitie, or concurrence of the other, selleth, releaseth, and disposeth all at his owne pleasure, contrary to the minde either of the Testator, or the Ordinary, who would not have named so many in the Will, or Administration, but to the intent that all might or should execute and administer, and one communicate their acts with another. The contrarie whereof is many times very prejudiciall and hurtfull, to those that are to take benefit by the said Will or Administration, who for the want of the due performance of this kinde of proceeding, are defrauded of all that which in right or reason should have come unto them, either by the Testators good will, or by the benefit of the Law. And yet there is no remedie for this in Law, so farre as I know, for that all these making but one person in Law, the Law yeelds no action to the one to sue the other: but yet the ancient practise of the Ecclesiasticall Law hath remedie, which would redresse all this mischief, if it were called again to use, & might goe without controulment, as the equiety of the cause doth require. And the remedie is this, that such other of the Executors

or Administrators as are in this sort intervarted from the execution of the Will, or Administration by the subtiltie of any like Executor or Administrator, should crave the assistance of the Judge, and will him by vertue of his office, so call in such practique Executor or Administrator, and to command him under paine of excommunication, not proceed no further in the sole execution thereof, but communicate all his acts, and dealings with the rest of his Co-executors or Co-administrators: which if it were so ordered, would make many mens Wills and Administrations better performed than they are, and a great sort of poore Orphans states more sure and certaine, than commonly they are in such Executors or Administrators hands.

And certainly in this case, there is some good use of Supervisors in dead mens Wills (whom many men meerly jest at, calling them candle-holders, as though they could do nothing else in the execution thereof, but hold the candle while the Executors sell the Defuncts money) if they might be permitted, to put in practise that authoritie which the Law giveth them, and that is when they finde any Executor deale fraudulently in the execution of any Testators Will, wherein they are named supervisors, or do ingrosse all the state of the Defunct into his hands, as hath beene before said, they call him to a particular account, that it may be seene how the administration stands, and each Executor may communicate to other particular receipts and disbursements: which if any shall refuse to do, then may the Supervisor make thereof complaint unto the Judge, as though the same man dealt not truly in the execution thereof, who though perhaps in the beginning could not take bond of him, for the true execution of the Will (because the Testator had made choice of him, and therein approved his faith, and that no man required caution of him for any Legacie in the Will bequeathed, in which case the Judge might take bond of him for feauntie of such Legacies as are bequeathed in the Will, yea though his faith hath beene approved by the Ordinarie, as hath beene before remembred) yet may the

Judge

Judge in this case, if he finde him justly suspected of fraud and deceit, remove him by the learning of that Law. For neither the Testator himselfe, if hee were alive againe, would indure him in this case, but would blot his name out of his Will, neither ought the Judge to suffer him, whose care is to see that dead mens Wills take their effect, according to the Testators meaning. All which the Law hath provision for; and for infinite things else of like good order in these cases, if they might be suffered to put them in execution without impeachment.

*Instit. de iussu-
et in iustis. vel
curator. c. 10. 11.*

And so farre as concerning those things wherein the Civile, and the Ecclesiasticall Law might be relieved, without prejudice to the Common Law; for because they have no practise thereof; and yet do not I bring forth these as the onely causes wherein the Civile and Ecclesiasticall Law may be licenced to deale in, over and besides the practise of those things that they have already, but that these are few among many other which might be sorted out, if so be there were any hope for the further enlargement of the profession.

CHAP. III.

Of the necessitie of retaining the practise of the Civile and Ecclesiasticall Law in this Land.

BE now to the necessitie of the maintenance of the Civile and Ecclesiasticall Law in this Realme; as they are now practised, or ought to be practised; which was a thing first propounded; but last put in execution in this worke.

Albeit that which hath bene already said as concerning the Civile and Ecclesiasticall Law may well imply the necessarie preservation of them both within this Land; yet because it was a thing I promised to shew in the beginning of this Treatise; after that I had gone over the rest of the parts

parts of my division, I will in a word or two make plaine the necessitie thereof.

And therefore for a ground of all the rest, I will assume this for a matter confessed, that every man knowes, that every well ordered Common-wealth stands on two parts principally, the politick part, which consisteth of the Prince and people, and the Ecclesiasticall part which standeth in *Sacris & Sacerdotibus*. And therefore well said the Emperour, Two of the greatest things that God ever gave unto the world (meaning earthly things) was the Empire or secular government whereby the outward man is ordered and made; as *Aristotle* saith, *bonus civis*, that is, a good and loyall subject: and the Priesthood whereby the inward man is ruled, and is made, as the said Author testifieth, *bonus vir*, that is, a good and vertuous man, which are two wonderfull effects of the whole government in generall; neither can the one of these be wanting, but the other will be ruinated and brought to desolation.

Secondly, no man is ignorant of this, but in politike government two things sway the whole state, the one is peace at home, and the other is warre abroad: which as they have their seasons, so they have their causes and effects, the one from counsell at home, the other from discipline abroad; neither can the one, or the other of these be maintained, but by their private and proper Lawes.

Beside, in peace who seeth not, there is as much need of vent by sea, for to benefit the Common-wealth by, either by importation of those things that wee want at home, or by exportation of those things wee abound with; as there is provision to be made for the increasing and preserving of those things that wee have rising and growing by land in our owne countrie, neither of which can be had or enjoyed without their proper Lawes fit and appertaining to either policie? And what Law is there that ordereth these busineses but the Civile Law onely, which giveth a forme to Navigation, and all occurrents that happen by sea, whether they be in, or about the Navigation it selfe or the contracts

*In authent.
quon. oport. E-
piscopus in prin.
col. 1.
Auth. de non a-
liamand. c. c. re-
bus Eccl. c. 2. §. 1.*

contracts, or as it were contracts that are made in, upon, or beyond the same.

As a Legall forme is requisite in peace at home, and Marine affaires abroad, that every thing may have his due effect according to the right thereof, so also it is necessary in warlike exploits upon the Sea, that every action have his limits and bounds, whereby Justice may bee ministred: which if it be to be observed where lawfull warre is held betweene Prince and Prince, that every one be not left unto his owne lust, much more is it expedient to be put in ure in Piracies and other Sea-robberies, where the innocent is spoyled, and the spoiler is enriched. The redresse wherof is not, but by the Admirall Law, to whom the Princes of this Land have granted that authoritie.

For the often commerce of Princes with Princes, & the negotiation that one State hath with an other, there is nothing more necessary, than frequent Embassages, whereby intelligence may be had what danger one State intendeth to an other, & how the same may be prevented by Leagues or otherwise, and how the same may be made and maintained: I know not what Law serves better for all these ends and purposes than the Civile Law.

In matters that appertaine to the soules health, the Preacher teacheth out of the word of God, wherein the right service of God standeth, hee ministreth the Sacraments unto the people, and instructeth them in other fundamentall points of Religion: but it is the Ecclesiasticall Law that compelleth men to the due observance hereof, and punisheth the transgressors.

All men grant, that there is a provision to be made for the Minister, for that it is against reason that any man should goe to warfare on his charges: but it is the Law of the Church that sets out this provision, and yeeldeth remedie for the recoverie thereof, if it be denied.

Nothing is more due unto the dead, than that their last Wills should be observed; for that it is such an ordinance as man hath not in his power againe, when God hath once called him hence, neither is there any thing that Prin-

ces have more graciously granted unto their subjects, than that in their life-time they may dispose of that which after they are dead, is none of theirs; and yet shall take place when they are not, as though yet they were theirs: in which provision the Civile and the Ecclesiasticall Law, are above all other Lawes most religious.

Christening, Wedding, Burying, whereby a man entrencheth into this world, converteth in the world, and returneth againe unto the earth, from whence he was taken, and so after passeth to glorie, and everlasting blisse, are every one of the Ecclesiasticall cognisance.

How many men of great skill, such as few Princes have greater in all kinde of learning, are of this ranke, not only in the societie of them that professe this knowledge here in the chiefeft Citie of the Land, but also in both the Universities, and in sundry other places of this Realme, not strangers, or forrainers, but home-borne subjects, of the same faith, of the same religion, of the same kindred, and familie, of like allegiance to the Prince, and service to the Commonwealth as other his good subjects are, even those that oppugne this profession chiefly? whose practice, if it be overthrowne, or provision lessened, not onely those that are now present, & make profession of this knowledge shall be faine to turne their copie, but those that are futurely to come, will change their profession, when they see there is no reward or estimation belonging thereto: for it is honour that nourisheth Arts, and no man will follow that profession that is out of count, and credit; but every Father will say unto his Son in like sort as *Ovids* Father said to him, when hee saw him addict and give himselfe wholly to Poetrie, *Stadium quid inuile tentas?* It was anciently said of the profession of these Lawes, *Dax Justinianus honores*; but now it is so far off from that, that it conferres honours, as that it is almost a discredit for any man to be a Civilian in this State, and the profession thereof doth scarce keepe beggerie from the gate.

As God doth dispose his government by justice & mercie (whereof notwithstanding mercie hath the supreme place in the Lords Tabernacle, as that which was put above

upon

upon the Arke, wherein were the two Tables of stone, in which the Law was written, to which S^r James alluding, saith, that mercie triumpheth over judgement) so the Princes of this Land to the imitation of that heavenly representation, have appointed two supreme seats of Government within this Land, the one of justice, wherein nothing but the strict letter of the Law is observed, the other of Mercie, wherein the rigour of the Law is tempered with the sweetness of equitie, which is nothing else but mercie qualifying the sharpenesse of Justice: to either which Courts they have sorted men fit for their skill, and education to manage the same; that is, to the seat of Justice, the professors of the Law of this Land, who may be thought best to know the Justice of the same: but to the other they have assigned the professors of the Civill Law, for that a great sort of titles of that Law, are titles of equitie, as, whatsoever is *Jus pratorium*, or *Jus adilicium*, with them is matter of equitie; so that they may seeme best able for their skill in these titles (of which no other Land hath the like) to assist the Lord Chancellour in matters of Conscience. Who though he be a man, for the most part, chosen by the Prince himselfe, out of the rest of the Sages of this Land, for his speciall good parts of learning and integritie above the rest (as now the honourable person is that occupieth that place, who is, as *Tullie* said of that eloquent Orator *Marcus Crassus*, *Non unus ex multis, sed unus inter omnes propè singularis*) so that they might be thought for their great and eminent wisdom in all things appertaining to their place, able to direct themselves; yet because it is, *Divinitatis potius quàm humanitatis, omnium rerù habere memoriam, & in nullo errare*, as one saith, It was providently done by Princes of former age, to joyne to these great personages, men furnished with knowledge in these cases of conscience; wherein if they should at any time stick, they might be advised by them that are assessors with them, what they find in the law proportionable to the case in hand, that thereto they might square their decree, or order accordingly; whose variety in these cases is such, that hardly there can fall out any case in practice, but there will be some Law,

Exod. 24.

James. 2.

in that learning, conformable unto it: which opportunity of men furnished with this knowledge for that seat, his Majesty shall want, unless the study of the Civill & Ecclesiasticall Law be maintain'd, which also for the cases of equity & conscience therein, is cald of the old writers, *Equitas Canonica*.

And what reason gave occasion to these precedent Princes to place men indowed with the skill of the Civill Law, in the Court of Chancerie, the same also ministred unto them mindes to commit unto the selfe same men, the ordering of their Courts of Requests: for that therein, for the most part are handled poore miserable persons causes, as widows and Orphans, and other distressed people, whose cases wholly relie on pietie and conscience, as a fit subject for that Law to deale in, which also will rake a mainte, if the studie of the Civill Law be not upholden.

So then to deny a free course to the Civill and Ecclesiasticall Law in this Land, in such things as appertaine to their profession, or to abridge the maintenance thereof, is to spoyle his Majestie of a part of his honour (whose glory it is to be furnished with all sorts of professions necessary for his state, and beneficiall for his subject) to weaken the State publique, & bereave it of grave and sage men, to advise the State in matters of doubt and controversie betweene foraine Nations and themselves, to disarm the Church of her faithfull friends & followers, and so to cut the sinewes (as much as in them lyeth) of Ecclesiasticall discipline, and to expose her to the teeth of those, who for these many yeares have sought to devoure her up; and so now would do it, if the mercifull providence of God, and the gracious eye of the Prince did not watch over her.

And so far of the necessitie of these two professions, and generally of the use and disuse of the Civill and Ecclesiasticall Law in this Land, and wherein it is overlaid by the Common-Law, and how it may be relieved, if it seeme good unto his Majestie, and the wisdom of this Realme. All which I have written, not of any purpose to derogate from the credit of that Law, under which I was borne, and by which I hold that small maintenance that I have: (for

I reverence it as a necessary Law for this State, and make such reckoning of every of the professors in his place, as becommeth me) but that it pitieth mee, and not only mee, but all those that tender good learning, and have no prejudice minde toward the Common-Law, to see two such Noble Sciences as the Civill and Ecclesiasticall Law are, so to be disgraced, as that there is no more reckoning made of them, or their professors, than if they were matters and men of no worth, and fit or apt for no service in the Common-wealth: and yet notwithstanding, the use of them is so necessarie as that the Common-wealth cannot want the service of them in matter of great importance to the State, which (if the profession should come to a downefall, as it is like shortly to do, if it be no more cherished and made of than it is) will be sooner secne by the want of them, than is now perceived by the having of them; and then perhaps, will the State lament for the losse of so goodly a profession, when it will be hardly recovered againe, as the children of *Israel* did for the tribe of *Benjamin*, when they had in one day slaine well nigh the whole number of them.

FINIS.



1954





AN INDEX OF THE PRINCIPALL Matters and Words, contained
in this Booke.

A

- A** Bbyes erected for good ends. pag. 183. 184. but subverted for private. 212
- Absence from judgement hindereth not proceffe. 58
- Accessorie when to be determined where the principall. 157.
when not. 232. what things to be accounted accessories. 233
- Acts of appropriations. 202
- Actions for things lent or pawned: Of Ejectment. Of Compensations. Of Passengers, Marriners, Fathers, Masters. 7. Of Mandate, Society, Bargaine, Change, Restitution, Usurie. 9. Popular. 22. Exercitorie. 89. Of Trover. 128; which is prejudiciall to the Ecclesiasticall Law. 130. 131. Actiones præjudiciales what. 242. Of Diffamation where to be tryed. 240, 241.
- Administration, when admitted: in what order, and when to be taken. 13.
- Administrators false dealing with Legatories, and how to be remedged. vid. Executors.
- Admiralsie. 128
- Pope Adrian restraineth the priviledge granted by Paschal. 200
- Adoption must be of such as are younger than the Adoptant. 130
- Adulterie what. 22. how punished. ibid.
- Advocates, the necessitie of them. 78. parallel'd with sauldiers. 201
- Advowson what. 196. how obtained. ib.
- Ethelstane, his law for Tythes. 138. 139
- Aimoine,

The Index.

<i>Aimoine why silent in Charles Martels Sacriledge.</i>	166
<i>Alcoran alloweth Tyibes.</i>	175
<i>Alienations not to be made for feare of suit.</i>	78
<i>Almes-money what.</i>	139
<i>K. Alured his grant to Churches. 193. Inventour of Lanthorns</i>	197
<i>Apertura Feudi, what.</i>	73
<i>Apostles Canons of what authoritie.</i>	194
<i>Appeales, when admitted, from whom, by whom, and when to be made.</i>	26. 55. 78. 79. 80
<i>Appearance within what time to be made.</i>	24
<i>Appropriation. vid. Impropriation.</i>	
<i>Aquinas censured.</i>	304
<i>Arbitrement, what.</i>	79
<i>Armes, and the cases incident. 99. how gotten. 100. how to be borne.</i>	101, 102
<i>Armour, by whom to be made.</i>	60
<i>Artificers immunity from service.</i>	41
<i>Auditors denied that immunity which professors enjoy.</i>	40
<i>Aventines paines in compiling his Annals.</i>	169
<i>Augustus, why so called. 108. his title to the Empire.</i>	ib.
<i>Augustine the Monke.</i>	143
<i>Avocation of causes inconvenient.</i>	131. 132
<i>Aurum glebale, what.</i>	45
<i>Authenticks what. 50. why so called. ib. their contents. seq.</i>	

B

<i>Baptisme how primitively administred.</i>	176
<i>A Baptismall Church, what.</i>	177
<i>Barcinus, the Collectour of the first Volume of the Decretals.</i>	75
<i>Barren ground what. 223. vid. Waste. What ground to be accounted barren. 224. Absolute and Comparative. 223. how distinguished from Heath. 225. Barren money, what. 224</i>	
<i>Bastards by law those that are borne eleven moneths after the decease of the womans husband. 55. severall sorts of Bastards. 244. not to beare their Fathers Armes. 245. nor to inheris</i>	

The Index.

inherit. ib. how they might be legitimated.	146
Bastardie, what. 243. the effects thereof. 245. to what jurisdiction the trial thereof belongeth. 246. propounded either incidently. 247. or principally. 248. Generall bastardie defined. ib. speciall defined. 249. refused. 250. both of Ecclesiasticall cognisance. 251. as is proved by severall precedents.	251. 252
Battaill Abbey by whom founded, and how endowed.	190
Bawds how punishable.	53
Benedict the first Founder of cloystered Monkes	187
Benefices, how long they may be vacant. 81. not to be impaired during the vacancie. 82. some appropriated to Bishops, and why.	216
Bequests. vid. Legacies.	
Bertricks Will.	194
Berytus, the priviledges thereof.	43
Bigamie.	83
Bishops, why so called. 34. their power and jurisdiction. 35. and degree. 120. 121. place in Parliament. 159. 160. their power in Ordination of Clerkes. 57. in Consecration of Churches. 191. 192. 193. & seq. & Chappels. 58. in Division of Churchdues. 154. in decision of controversies. 54. in permission or prohibition of building Churches. 191. and endowing them 194. and filling them. 195. 196. & seq. their manners. 51. 52. who to be elected. 64. not hunters, nor severe. 85. to be resident. 58. 65. not to be called before a temporall Judge. 65. nor deteine the Tythes of any Benefice, by them founded. 206. 207. nor passe them over to Lay men. 208. in what cases they may hold them in fee. ib. their primitive endowments. 209. 210. their different right in Tythes and demeanes. 215. they sometime present at Patrons Wils. 194	
Bishop of Romes priority.	66
Blasphemie capitall.	59
Boniface the 8. Collectour of the second Volume of the Decretals.	75
Border grounds.	61
Bonghes of great trees tyeable. 229. 230. &c. not accessories	

The Index

to the trees.	333.
Bonds of Parishes, of Ecclesiasticall cognisance. 151. vi. Pa- riß. But of Bishopricks, temporall.	155
Brethren of the whole blood, preferred before others.	60
Briberie how punished.	33, 24
Burglarie how punished.	21
Burners of houses how punished.	19

C

Cæus his fact. 157. applied.	158
Canon Law, what. 73. divided. 74. vid. Law.	
Canons of Nice. 153. of Antioch. 154. of the Apostles, questio- ned.	194
Cardinals originall.	152
Captives. 27. feigned by the Law to be dead when they are ta- ken.	129
Calsiopea's new Starre.	170
Castalia. Castle-ward, what.	70
Castellan, who.	47
Censures to be judicially executed.	85
Cessers for what instituted.	44
Ceremonies used at the dedication of a Church.	191
Chamberlaines place.	46
Chancellours, what. 115. 116. how they differ from Commis- saries: ibi their antiquity: ibi Lord Chancellour, why provided of Assessors.	275
Changes of Church-lands.	57
Chappels how to be built.	58
Charles Martel. vid. Martel.	
Children not to be punished so severely as men. 85. after di- vorce how to be educated. 62. their maintenance how it may be provided for.	263
Shorepiscopi, their office.	153, 154
Churches affinity with the Common-wealth. 311. their privi- leges. 34. 293. Prescription. 62. building. 65, 66. not to be built without the consent of the Bishop. 193. nor endowed y 194. Manner of dedication. 52. 191. their lands not to be o- aliena-	

The Index.

alienated. 52. 54. 63. nor goods immoveable. 56. nor vessels.	
64. yet may they be exchanged. 57. at the Bishops disposal.	
193. 194. Churches formerly both <i>seu</i> and <i>meane</i> .	197
Church dues how divided.	153. 154
Church peace-breakers how mulcted.	178 (175
Church-robbers curse. 172. 173. the crime fatal to kingdomes.	
Church-shot.	138
Circumstances considerable in punishing.	99
Civilians disrespected.	274
Civile Law. <i>vid.</i> Law.	
Pope Clement's sentence for the K. of Sicily. 113. Clementines what.	75
Clergies orders. 54. most beneficiall to the Prince.	186
Clerkes, why so called. 34. who to be admitted. 65. where to pay for admittance. 57. their behaviour and number. 51. 52. 53. strictnesse of conversation. 184. to be revered. 117. not to hunt. 85. nor to medle in civill affaires. 82. their immu- nity. 64. 66. how to be judged. 60. by whom.	65
Cloistered Monkes their originall. 187. Priviledges.	188
Clients compared to Syphisus.	132
Cnuteslawes.	140
Code, what, why so called, why compited. 31. how distinguished from the Digest. 32. 33. contents s. for whom most usefull. 49	
Cognisance, Ecclesiasticall and Temporall. 158. <i>vid.</i> Ecclesiastical.	
Collations, the Sections of the Authenticks.	50
Collectours of subsidies how to be punished for exacting. 14. their office.	38
Colours, their dignitie in Armory.	102
Combats, permitted by the Common law.	86
Commissaries, what.	116
Common-wealth allied to the Church. 211. consistes of two parts 271. ruled by peace <i>vid.</i> warre.	ib.
Competency to be allowed to the Minister.	95. 196
Commutation of Church lands how formerly tolerated and how in the present age.	210. 211
Confiscation in whole or in part. 25. goods confiscate how to	

The Index.

<i>be disposed.</i>	37
<i>Connexitie of causes not to be taken away.</i>	148. 157
<i>Consecration of Churches, with what ceremonies performed.</i>	191
<i>Consent of parents, requisite to the Marriage of Children.</i>	67
<i>Consistories why granted.</i>	117
<i>Constantines great bountie towards the Church. 182. his law concerning Executors.</i>	267
<i>Constantinoples priviledges.</i>	43
<i>Consull what.</i>	45
<i>Contracts Marine.</i>	88. 89
<i>Contribution for ejectments.</i>	92
<i>Controllers office.</i>	39
<i>Controversies how decided.</i>	9
<i>Corruptions in judgement, how punished.</i>	20
<i>Corpes not to be prohibited buriall.</i>	6
<i>Cozenage how punished.</i>	31
<i>Councillours. vid. Advocates.</i>	
<i>Councils decrees as lawes. 66. Council of Nice. 153. of Antioch. 154. Lateran, of Gangra, and Antioch make Bishops disposers of Church goods. 194. as also the Toletan, Bracaran, &c.</i>	195
<i>Courts Spirituall abridged of what they formerly have had. 114. 115. 146. 147. why first granted. 117. Courte of Chancerie. 275. of Requests.</i>	276
<i>Crimes extraordinary.</i>	19. 20
<i>Criminall matters triable in Ecclesiasticall Courts.</i>	48. 115
<i>Crosse, with what ceremonies set up in Churches. 191. used for want of Churches.</i>	197
<i>Curiositie of School-men prejudiciall to the Church. 162. 202</i>	
<i>Curse, the More and the Lesse. 172. The manner of Cursing. 173. The forme of the generall Curse with Bell, Booke, and Candle.</i>	174
<i>Customes of tything, of Ecclesiasticall cognisance.</i>	147. 148
<i>Cystercians exempted by the Pope. 200. but compelled by the Parliament to pay Tythes</i>	143
<i>Concise. p. 52. 132.</i>	Damages

The Index.

D

Damages, why not cessed in cases of consultation. 127. treble damages.	156
Deacons, at what age to be ordained.	65
Dead corpes not to be injured.	38
Debts unknowne a pretence used by Executors.	264
Debtors not to be Guardians.	59
Decision of controversies how many waies effected.	9
The Decrees, what 74. their Authors	ibid.
Decretalls what.	74
Decurio, his office.	27
Dedication of Churches.	52. 191
Defects, in what manner they may be legally objected.	238.
defects in the Statute how they may be supplied.	259
Defendants office. 79. 80. He may chuse his Court.	119
Degradation of Clerkes.	95. 117
Dice play how provided against.	6
Diffamation, what. 235. in word, writing or deed. ib. of crimes.	
236. 237. of defects. 238 both of Ecclesiasticall cognisance.	
ib. how punished.	239. 240
Digests, what. 41. why so called. 4. the division of them. 5. 82	
seq. Difference from the Code	32
Dismissorie letters	26
Diocesans right in Churches. vid. Bishop.	
Dionysius his head.	171
Discipline.	98. 99
Divine service not to be disturbed.	66
Division of Parishes. 152. 153. Of Churches dues.	154
Divorce, what. 9. for what causes. ibid. 55. 83. children after their parents divorce how to be educated.	62
Doctors precedencie.	106
Dowrie of the first wife not to be bestowed on the second wifes children 51. 263 preferred before all debts. 61. plea of Dowrie.	118
Duties imposed by the Exchequer.	139
Dupleix the historian excuseth Martellus fact. 165. defendeth	168
it.	

The Index.

E

Earle Marshall hath authoritie to give armes .	100
Earth Tythe-free.	122
Ecclesiasticall jurisdiction. 35. equally the Kings, as the Temporal. 147. severally impeached. 115. by premunire, and prohibitions. 121. 122. in matters of Admiraltie. 128. 129. of willes. 134. 135. of Tythes. 146. 147. &c. of waste ground. 223. in cases of diffamation. 237. 238. of bastardie. 243. & sequent.	
Ecclesiasticall Law. vid. Law,	
Ecclesiasticall persons immunitie	65
Ecclesiastidici, what.	115. 116
K. Edgar's law.	140
K. Edmunds law.	139
K. Edward the third heire to the Crowne of France. 109. Edward the Confessours Lawes. 141. Edward the sixth his statute concerning Tythes. 145. now perverted. 146. & seq.	
Ejectments in sempests.	90
Election, what,	71
Election of Bishops. 64. 75. 76. of the Pope.	ibid.
Q. Elizabeth commended. 109. misguided in one particular.	310
[Elsewhere] in the statute of premunire how to be understood.	124
Embassadours. vid. Legates,	
× Ember daies, their originall and end. 76. 77. why so called.	ib.
Q. Emma acquitted by fire Ordeall.	36
Empire an elective state.	109
Emulation an occasion of prohibitions.	127
Enhancers of the price of things.	24
Epistle betweene Pope Marke and Achanasius questioned.	154
Entrecorron, what.	191
Esponsals.	82
Esquires, whence their name and title.	107
Eucherius his vision. 165. what credit to be given to it.	170.
	171
	Ennuch-

The Index.

Eunuch-makers how to be punished	67
Exceptions of severall sorts. 17. when alleaged.	ib.
Exchequer, what. 28. the revenues thereof. 37. 38. duties which it imposeth.	39
Executors delay of paying legacies how provided for by the Ci- vill Law. 265 their dutie. ib. injustice in pricing goods. ib.	
Constantines Law concerning the same. 269. the remedie thereof. 270. when the Judge may take bond of the Executor.	ib. & 271
Expences of Law recoverable in Ecclesiasticall courts.	260
Exemption from Tythes to whom first granted. 200. how after restrained.	ib.
Extraordinary crimes.	19. 20
Extravagant of John the 27.	15

F

Fades, their priviledges.	39
Falcidia lex, what.	12. 31
Farmers priviledges.	45
Fathers urged for the moralitie of Tythes.	163. 164
Feciales.	99
Fee-farme, what.	45
Fees not to be enhanced.	20. 68
Fends what. 68. their originall and division. ib. their compilers and Etymon. 69. how they may be lost.	72
Fewell Tythable.	222
Fiction, what. 128. example, whereof.	129
Fire Ordeall	86
Follia aurea	45
Fonts their originall and progresse.	178
Force, and force armed. 15. publique and private.	22
Forfeiture of Fends.	73
Forgery of severall sorts.	23
Founder of a Church, what power hee hath.	193. 194. 195
Fruits falling in another mans ground.	16
Fundi limotrophii.	68

The Index.

G

- Gangra Councell maketh B. to dispose of Church goods. 194.
 Gentlemen. 106. of how many ranks. 107
 Gifts how challengeable. 14, 15. which to be enrolled. 56
 Gods love to his Ministers. 119, 120
 Gold preferred before other mettals. 219
 Gothes invasion of Italy. 164
 Government of women lawfull. 109. but not convenient. 110
 Governours of Cities, their office and power. 29. their election. 33.
 Governours of Provinces, their directions. 54. 61
 Granges. what. 191
 Gratian the compiler of the Decrees. 74
 Grievances of the Common-weale. not provided for by the
 Common Law. 262, 263. & seq. concerning parents. ib. yet
 might have remedie from the Civil. ib. concerning Execu-
 tors. 264. with the remedie. 265
 Greeters reprehension of Junius. 191
 Guardians office. 10, 59
 Gynaeocratic lawfull. 109

H

- Heath grounds. vid. Waste.
 Henry 4. his Statute concerning exemption of Tythes. 200.
 Henry 8. his Statutes concerning Tythes. 143, 144. now per-
 verted. 146, 147 his act of subversion of Abbeyes wherein
 deficient. 212. and perhaps therefore punished. 212, 213
 Heralds why called feciales. 99
 Hereticks. 35, 36. 63
 Historians, who most creditable, and why. 166
 Hemage. 69
 Honourable places. 45, 46
 Honorius Archbishop of Canterbury brought in the division
 of Parishes. 152, 153
 Hospitals of severall kinds. 34
 Hospitallers exemption from Tythes. 200
 Hunting not permitted to Clerkes. 85
 Huf-

The Index.

<i>Husband mens immunities.</i>	43
<i>Second Husband, in case hee defraud the children of the first, what remedie.</i>	268

I

<i>K. James his care over the Church,</i>	211. 213
<i>Jealousie, how to be remedied.</i>	63
<i>Jests how farre lawfull.</i>	236
<i>Jewes ignominies.</i>	84
<i>Immunity from Tythes, why first granted to religious houses.</i>	188
<i>Impeachment of Ecclesiasticall Jurisdiction, 122. &c. v. Law. how to be releevd.</i>	255
<i>Impediments of Matrimonie.</i>	83
<i>Impossibilities abhorred by the Law.</i>	130
<i>Impropriations why first granted to Religious Houses, 188. whether by the authority of the Prince, or Pope, 290. in them some way tolerable, 213. but not so in Lay men, 214. yet hard to be remedied, and why.</i>	ib.
<i>Ina's Law concerning Tythes.</i>	138
<i>Incestuous marriages.</i>	53
<i>Indowments of Bishops wher in they at first did, and now should consist.</i>	209, 210
<i>Infeudation of Tythes, when it begun.</i>	164, 165
<i>Injunctions, why so called, 15. in what cases admitted.</i>	14
<i>Pope Innocents restraint of priviledges granted to Religious Orders.</i>	200
<i>Institution, what, 4. the necessity thereof.</i>	81, 82
<i>Instruments how to be made, 56. Of Dowrie.</i>	58 (273)
<i>Intelligence betwixt Kingdomes, preserved by the Civile Law.</i>	
<i>Interpretation of Lawes belongs to the Judges, but more principally to the King, 257, 258. not to bee often varied.</i>	256.
<i>want thereof prejudiciall to Ecclesiasticks.</i>	255
<i>Investiture what.</i>	71
<i>K. Johns unjust usurpation, 112. John of Gants plot.</i>	ib.
<i>S. Johns of Jerusalem that Order exempted from Tythes.</i>	200
<i>Joyntures not to be sold.</i>	58

The Index.

Judges office. 53. to perswade peace. 78. not confound jurisdictions. 158. Interpreters of the Statutes. 255. their favour implored in that point. 257. they have need of two salts. ib. ought to be obeyed. 58. Ecclesiasticall Judges falsely charged with the rejection of pleas in discharge of Tythes. 181. 182	
Judgement, civile, criminall, mixt. 6. publick. 22. ecclesiastick.	79, 80
Juglers how to be punished.	21
Ivo Bishop of Carnat, Compiler of the Decrees.	74
Jurisdiction Ecclesiasticall, wherein impeached 121. 122. 146. not to be confounded with the temporall.	133. 149. 158
Jury of twelve men not requisite to determine which is barren ground. 227, 228. say nothing but what the Judge dictates. ib. mostly partiall because possible parties.	229
Jus patronatus what.	196
Justices of the peace, their office.	41, 59
Justinian, why he compiled the Code.	31

K

Kingdomes indivisible.	113
Kings, their Titles given by the Law. 103. their Supremacie. 104. Fountaines from whence is derived Ecclesiasticall jurisdiction as well as Civile. 123. with whom resideth the prime power to interpret Statutes.	257, 258
Knights of how many kindes. 105. whether they or Doctors to have precedencie.	106
Knutes Lawes.	140

L

Lands of the Church, in what cases they may be aliened, let, or sold. 63. vid. Church. what Lands may be given by Will 137	
Land-markes not to be removed.	21, 22
Lanternes, upon what occasion invented.	197
Lapses, upon what occasion induced.	199
Lateran Councell, when holden, and with what successe.	171, 172
Law, what. 2. publick, private, of Nature, of Nations, ib. the object	

The Index.

- object of the Law, 4, 5. the multitude inconvenient, 32. how
 to be interpreted, 256. without penalties, of small force, 259.
 Canon Law, what, 73. excused, *ib.* how in use with us, 114,
 115. &c. Civile Law, what, 3. most equitab^{le}, *ib.* Division
 of it, 4, 5. & seq. how farre in use in this Land, 88. & seq.
 like a sword in a scabbard, 97. the necessitie thereof, 272.
 For Marine controversies, *ibid.* commerce of Princes, 273.
 punishment of spirituall disobedience, *ibid.* Recoverie of Ad-
 ministers right, *ibid.* Wils, Weddings, Burials, 274. Cases in
 Chancerie, 275. in the Court of Requests, 276. severally
 impeached by the Common Law, 122. in marine matters,
 228. in Wils, 134, 135. in Tithes, 146. in cases of waste
 ground, 223. of Diffamation, 237. of Bastardie, 243. how it
 may be releevd, 255. Common Law, wherein defective, 262,
 264. how it may bee supplied, *ib.* The word [Law] not still
 taken for the Common Law, 158. Law Ecclesiasticall, 159.
 animated by the King, 160. not to bee confounded with the
 temporall, *ib.* of what antiquitie, *ibid.* wherein abridged,
 121. how to be releevd, 255. & seq. Saxon Lawes, 138,
 139, 140. Salick Law refuted, 109. Law of Laps, 199
 Lawyers, why no fees assigned to them, 30. Temporall and Ec-
 clesiasticall. 159
 Lay-men may not celebrate divine Service, 66. nor hold Im-
 propriations, 214. when they began to hold Tithes in fee,
 162, 163. their ill will to the Clergie. 198
 Lay-patrons, *vid.* Patron.
 Leases for how long to be let. 45. 63
 Legacies, when due, 11. how taken away, 12. when to be paid,
 51. for pious uses, 67. unjustly detained under pretence of
 debts unknowne, 264. what remedie for that abuse, 265.
vid. Testaments.
 Legataries, how defrauded, and how they may bee releevd.
 266
 Legates, why so called, 28. 40. their priviledges, *ibid.* usually
 Civilians. 96
 Legitimation of children, 58. how made amongst the Romans,
 246. how with us. *ibid.*

The Index.

<i>Leige-men.</i>	72
<i>Lent things if denied, how recoverable.</i>	7
<i>Letters dimissorie.</i>	26
<i>Libell, what, 19. the Authours and Concealers how punished.</i>	ibid.
<i>Liberall Sciences.</i>	29
<i>Like Reason, like Law.</i>	156, 157
<i>Litigious cases what.</i>	62
<i>Lombards, the first Authors of Fends.</i>	71
<i>Lucius, first Christian King of England.</i>	142
<i>Lycurgus his uprightness.</i>	112

M

<i>Mad persons how provided for by the Law.</i>	11
<i>Magdeburgenses vindicated from mis-allegation.</i>	169
<i>Magistrates office.</i>	28, 29
<i>Mahomet alloweth Tythes.</i>	175
<i>Maiores election, and office.</i>	53
<i>Maintenance of parents and children, how it might be provided for.</i>	263, 264. & seq.
<i>Manner of Tything, how to be expounded.</i>	180
<i>Manzeres what.</i>	244
<i>March-grounds.</i>	44
<i>Marianus Scotus imperfect.</i>	171
<i>Marine affaires.</i>	88, 89
<i>Mariners priviledges.</i>	42
<i>Marriage, what, 9. 55. within what degrees forbidden, 53. why to Priests, 253. within the yeare of mourning punishable, 55. in the husbands absence, 62. impediments of marriage, 83. second marriage prejudiciall to the children of the first.</i>	263, 264. 268
<i>Charles Martel the first in the Christian world that violased the right of Tythes, 164. his fact related at large. ib. 165. how censured by historians, ib. why denied by some, omitted by some, 166. related by others, 167. & those French-men, 168. 170. whence they had the storie, ib. his fact imitated in other Nations, 169, 170. the vision concerning him, 165.</i>	whe-

The Index.

<i>whether creditable.</i>	170, 171
<i>Martiall causes of Ecclesiasticall cognisance.</i>	98
<i>Master of the Souldiers, 45. of Requests, 53. of the Ship.</i>	89
<i>Mercie triumpheth over judgement.</i>	375
<i>Mere-balkes not to be removed.</i>	21, 22
<i>Metals tytheable. 217. arguments to the contrary answered.</i>	
219, 220. how they are generated, 218. they may renew, but	
seldome doe.	ib.
<i>Micha's Disciples.</i>	198
<i>Militarie discipline.</i>	48
<i>Minerals. vid. Metall.</i>	
<i>Ministers, at what age to bee ordained, 65. vid. Clerkes.</i>	
<i>Minors estates how to be disposed of.</i>	59
<i>Miracles not so frequent now as formerly.</i>	171
<i>Monasteries not to be builded without the licence of the Bishop,</i>	
51. their priviledges, 184. and the bad use of them, 185. the	
restraint thereupon.	ibid.
<i>Monetaries immunitie from service.</i>	43
<i>Money why used.</i>	224
<i>Monkes life and conversation. 51. 184. originall of cloystered</i>	
<i>Monkes.</i>	187
<i>Mother-Church.</i>	176, 177
<i>Mother-Village.</i>	44
<i>Mort-maine, the originall of it, 183. in severall Nations,</i>	
185. whence the name. ib. now not necessarie.	ib.
<i>Myners immunitie.</i>	42

N

<i>Names not to be altered.</i>	100
<i>Naturales filii, who</i>	244
<i>Navigation beneficiall to the Common-wealth 271. requireth</i>	
<i>the practice of the Civile Law.</i>	ib.
<i>Necessitie of the Civile Law in this Land.</i>	271
<i>New-yea's gifts of ancient use.</i>	38
<i>Nicene Canons urged, 153, 154. hardly escaped the fire of the</i>	
<i>Arrians, ib. their authoritie questioned. ib. what exempla-</i>	
PP3	ry

The Index.

<i>My life they require of Monkes.</i>	184
<i>Notaries place.</i>	46
<i>Nothi, who, 244. Nothæ febres.</i>	ib.
<i>Natalia, what.</i>	226
<i>Novelles, what.</i>	50
<i>Nutrdinæ, why so called.</i>	29

O

<i>Oathes, of severall kindes, 7. of the deceased, when good,</i>	56.
<i>women tumbler's of no account.</i>	ibid.
<i>Obligations, how they may bee excepted against, 7. how many</i>	ib.
<i>sorts of them, 17, 18. by words how releas'd.</i>	ib.
<i>Offences, publick and private.</i>	18
<i>Officers, how to be chosen.</i>	41
<i>Ὀυοφθῆον what.</i>	191
<i>Oratories in private houses.</i>	57
<i>Ordeall fire and water.</i>	86
<i>Order of succession, 63. who may not take orders.</i>	77
<i>Orders of Monkes tythe-free.</i>	200
<i>Ordination of Ministers.</i>	76
<i>Orphanes estates ill provided for by the Common Law,</i>	264,
<i>265. but may finde releefe at the Civile.</i>	266

P

<i>Pagans, why so called.</i>	215
<i>Pandects what, 4. the division thereof.</i>	5. & seq.
<i>Parents affection to one childe how moderated, 61. greivances</i>	ib.
<i>how to be releev'd.</i>	263
<i>Parishes, their bounds of Ecclesiasticall cognisance, 151. the</i>	ib.
<i>originall of them, 152. 174. the severall acceptions of the</i>	153
<i>word.</i>	153
<i>Parliament, of whom it consisteth, 159. hath sole power to re-</i>	ib.
<i>forme the Statutes.</i>	256
<i>Parricides, how punished.</i>	23
<i>Paris, no accessories, 233. similar and dissimilar.</i>	ib.
<i>Pope Paschal his priviledge granted to religious orders.</i>	200
<i>Stephen Pasquier censured, 165. 166. 170. his mistake in a</i>	240.

The Index.

quotation.	169
Passage-money.	62
Patricii, who.	45
Patrons may present, not ordaine Clerkes, 57. their power to erect a Church, 191. 193. dependeth upon the Bishop, ibid. to endow and fill it, 194, 195, 196. the abuse of their authority, 198, 199. taken notice of by severall Councils.	ib.
Peeres.	105
Pearles, by whom to bee worne.	42
Perpetuall right betweene passengers.	90
Peter-pence, when first paid.	139
Philosophers, why no stipend allowed to them.	30
Physicians by Constantine made Earles.	47
Pipin buried with his face downwards.	165
Piracie, what, 94. onely punishable by the Admirall Law.	273
Pirates.	95
Plaintifes office.	79, 80
Plea of Tenements and of Dowrie have beene of Ecclesiasticall cognisance.	118
Plough-almes what.	140, 141
Pluralities in what case tolerated, 85. the abuse of pluralitie of Executors, 269. with the remedie.	270
Poets denied the priviledge of other professors.	40
Popes precedencie, 66. whether first granters of Impropriations.	190
Popular Actions.	22
Possessorie right what.	94
Post-horses.	49
Postulation of Bishops, what.	76
Practice of the Civile Law necessary in this Land, 272. of such cases as are not provided for by the Common.	262, 263
Prayer and Preaching conferred.	188, 189
Preaching preferred.	ib.
Precedencie of States, 104, 105. of Knights and Doctors, 106. of the Pope.	66
Priests, why called Sacerdotes, 34. why Presbyters, ibid. why prohibited marriage.	253
	Primates

The Index.

<i>Prelates excesses.</i>	86
<i>Premunire what, 122. the originall of it, ib. 125. the little use of it, 123. the Statute expounded, 124. wrested by our Common Lawyers, ib. in force against Priests and Jesuites.</i>	125
<i>Prenotary, his place.</i>	46
<i>Prescriptions, the kinds and effects of them, 17. for Lay-men to hold Tythes in fee, how ancient, 163. prescription supposeth possession, 216. lyeth not against a mans selfe.</i>	ib.
<i>Presentation originally the Bishops right, 196, 197. why devolved to lay-patrons, ibid. how abused by them, 198, 199. and therefore a resumption attempted by the Bishops.</i>	ib.
<i>Pretor, who.</i>	45
<i>Primicerius whence.</i>	46
<i>Princes not to bee traduced, 85. their name to be put in all Instruments, 56. their titles and supremacie, 103, 104. they should befriend the Church, 211. whether the first granters of Impropriations.</i>	190
<i>Principal what, and what Accessorie.</i>	233
<i>Prison-breakers how punished.</i>	21
<i>Priviledges what, 182. of Religious Persons.</i>	188
<i>Prizing of goods oft-times partiall.</i>	266
<i>Probates of Wills how farre effectuall.</i>	137
<i>Proces in Ecclesiasticall Courts, 78, 79. by Accusation, Denunciation, or Inquisition.</i>	84
<i>Prodigals estates, how provided for by the Civile Law, 268. who so accounted.</i>	11
<i>Professours excused from services, 40. made Earles, 47. their stipends.</i>	29
<i>Promises to be kept.</i>	29
<i>Promoters office.</i>	37
<i>Property of things what, 93. how got.</i>	ib.
<i>Protocols what.</i>	56
<i>Publick workes, by whom to bee made.</i>	29
<i>Punishment by death foure-fold, 25. of souldiers.</i>	99
<i>Pupils estates how to be ordered during their minority.</i>	9-10.
<i>Purgations Canonically and Vulgar.</i>	86

The Index.

<i>Purple, a weare peculiar to Princes.</i>	43
<i>Purser of a ship.</i>	90

Q

<i>Queene next in ranke to the King.</i>	104
<i>Quotitie of Tythes Morall, 203. not Judiciall.</i>	205

R

<i>Racking, when to be used.</i>	25
<i>Ranks of the Nobilitie.</i>	104, 105
<i>Receivers of Theeves how punished.</i>	20, 31
<i>Reformation at the first wherein defective.</i>	212.
<i>Refutatio feodi what.</i>	73
<i>Reliefes of the Civile Law proposed.</i>	255. & seq.
<i>Religious persons of what life they should be.</i>	184
<i>Reprisals whether lawfull. 56. how differenced from piracie.</i>	95
<i>Residencie required, 81. except in case of sicknesse.</i>	ib.
<i>Retraction of sentence, within what time it may bee made.</i>	37
<i>Rhodians ancient mariners.</i>	90
<i>Right, what, 2. to any thing how gotten.</i>	15
<i>Rolles what they comprehended.</i>	47
<i>Rulers of Provinces, their office.</i>	54

S

<i>Sabbath partly naturall, partly positive.</i>	204, 205
<i>Sacraments by whom not to be administred.</i>	85
<i>Sacred Mysteries not to be celebrated in private.</i>	57
<i>Salick Law.</i>	109
<i>Salomons Temple.</i>	219
<i>Sanctuarie to whom advantageous.</i>	36
<i>Sarum Church, by whom and how endowed.</i>	190
<i>Satisfaction what.</i>	94
<i>Saxon Lawes.</i>	138, 139
<i>Schooles for Henchmen what.</i>	48
<i>School-mens curiositie, wherein prejudiciall to the Clergie.</i>	99

The Index.

<i>gie.</i>	162. 202
<i>Sea-affaires determinable by the Civile Law, 88. Sea com-</i>	<i>mon.</i>
<i>Secretaries place.</i>	46
<i>Secundocerius what.</i>	46
<i>Senate of Rome, why they refused to admit Christ into the</i>	<i>number of their Gods.</i>
	235
<i>Senators who.</i>	46. 48
<i>Seperatorum seperata est ratio.</i>	222
<i>Sepulchers violated, the punishment.</i>	20
<i>Services of the Common-wealth of three sorts, 28. exemption</i>	<i>from them how procured, ib. services to the Exchequer, 39.</i>
<i>who exempted from personall services, 40. Divine Service</i>	<i>not to be disturbed, 66. nor celebrated by Laymen. ib.</i>
<i>Souldiers, priviledges, wages, discipline, &c. 48, 49. they on-</i>	<i>ly permitted to carrie weapons, 54. their diet and apparell,</i>
<i>98. their faults. ib. and punishments.</i>	99
<i>Sonne not to succede the Father in Spiritualls.</i>	76. 77
<i>Spousals what.</i>	9.
<i>Spurii who.</i>	244
<i>Stage-players incapable of some immunities.</i>	43
<i>Starre in Cassiopea prodigious.</i>	170
<i>Statute of Premunire expounded. 124. those concerning mat-</i>	<i>ters Ecclesiasticall imperfect, 127. of Henry 8. and Edw.</i>
<i>6. how to be interpreted, 256. how supplied, 258, 259. The</i>	<i>word [Statute] doth not inferre Temporall cognisance, 158.</i>
<i>Statute of Mortmaine, why made, and by whom.</i>	183
<i>Stealing before the Will be proved, how punished, 21. of Chil-</i>	<i>dren or men, 24. of women.</i>
	67
<i>Stellionatus crimen.</i>	21
<i>Stipends for liberall Sciences, 29. none for Lawyers, nor Phi-</i>	<i>losophers.</i>
	30
<i>Strangers how to be intreated.</i>	60
<i>Students excused from personall services.</i>	40
<i>Subjects of how many sorts.</i>	27
<i>Subsidies.</i>	38
<i>Successions, 63. 71. in Spiritualls 76. of great personages, 109.</i>	<i>whether</i>

The Index.

<i>whether the Sonne borne before his Father was King, ought to succeed in the Kingdome, III. whether the grand-Child or second brother be to succeed.</i>	112
<i>Suerises not to be sued before the principall.</i>	51
<i>Suertiship of women how to be releued.</i>	7
<i>Suing out ones Liverie.</i>	71
<i>Superimpositions when used.</i>	38
<i>Supervisors of Wils whereto usefull.</i>	270
<i>Surveyors office.</i>	44
<i>Swearing, capitall.</i>	59
<i>Sylva cædua in the Statute canvassed.</i>	229, 230
<i>Symonie.</i>	64. 84.

T

<i>Templars exempted from Tyth-paying.</i>	200
<i>Tenth Number, the perfection of the rest, 203. whether a Figure of Christ.</i>	204
<i>Tenure, vid. Fend. For terme of life or yeares, 70. perpetuall.</i>	ib.
<i>Testaments by whom they may be made, II. a priviledge granted by Princes, 265. The kinds, prooffe, and publication of them. II. if doubtfull, how to be understood, 12. though imperfect, yet stand good for Children, 61. how much may bee bequeathed, 12. how many witnessses required to the making. 135. when lands are devised. 137. a part of Ecclesiasticall Jurisdiction, 134. but in part rent from it.</i>	135
<i>Testimonie of one witnessse. dangerous.</i>	136
<i>Theft, the definition, division, and punishment of it.</i>	18
<i>Theodosius, Author of the Statute of Mortmaine, 183. and therefore disliked by Jerome and Ambrose.</i>	ib.
<i>Tiberius requesteth that Christ might be admitted into the number of the Roman Gods.</i>	235
<i>Timber by nature Tytheable, but exempted by Statute.</i>	230
<i>Titles which have beene triable in Ecclesiasticall Courts, 114. 115. 116. &c. Title of lands varieth not with the accidents.</i>	227
<i>Titulus what.</i>	152

The Index.

<i>Treason, what.</i>	22
<i>Treasure found, to whom it belongeth</i>	38
<i>Treasurer of the Chamber.</i>	47
<i>Treaties betwixt Princes to be made by Civilians.</i>	96
<i>Treble damage, of Ecclesiasticall jurisdiction.</i>	156
<i>Toll-gatherers exacting how to be punished.</i>	14
<i>Trees, when and why they may bee lopped by another than the owner, 16. loppings of great trees tythable. 229. cutting of another mans, how to be punished.</i>	19. 231.
<i>Tribonian, a famous Lawyer.</i>	32
<i>Tribute.</i>	31
<i>Actions of Trover, what.</i>	128
<i>Truce at sometimes more especially to be observed.</i>	78
<i>Tumult how punished.</i>	19
<i>Turves tythable, 221. arguments to the contrary answered.</i>	222
<i>Tutelage, the severall kinds thereof.</i>	9
<i>Tutors, 9. how distinguished from Guardians. 10. what required of them.</i>	ibid. & 59
<i>Tithes, matters of Ecclesiasticall Cognisance, 138. 143. 148. and reall composition for them, 201, 202. by the Lawes of our Saxon Kings, 138, 139, 140. &c. How they stood after the Conquest, 142, 143. in what case triable in a Temporall Court, 144. the forfeitures for non-payment, 156, 157, the curse therefore, 172, 173. their different State under the Law and Gospell, 161. with the causes thereof, 162. & seq. when they came in use among Christians, 161. part of the Morall Law, 163. 203. and how farre. 205. the ground of the precept, 180. first invaded by Charles Martell, 164. and in imitation of him by others, 169, 170. allowed by Mahomet, 175. and strictly exacted in Primitive times, 173. 174. to bee payed to the Baptismall Church, 176. 214. 215. the contrary, why not reformed in the Lateran Councell, 178, 179. not to bee detained by a Bishop though Founder of a Benefice, 206. nor were his Primitive Endowments, 209. of Mineralls due, 217. of Turves, 221. of bonghes of great trees, 229. If in no Parish, to whom</i>	

The Index.

whom they belong, 208. manner of tything, how to bee understood, 180. prescriptions against tythes, 179. 206. 207. Immunitie from tythes, why first granted to Religious Houses, 188. wherein Religious Orders were exempted from paying tythes, and of what things. 200. many Lands pretended tyth-free by that exemption, which are not. 201

V

In the Vacancy, who anciently had the fruits. 217
 Valvaiores majores, & minores, who. 73
 Vassalles of of how many kindes. 72. 73
 Villages converted after Cities. 215
 S. Vincents Crow. 170
 Universities permitted the use of the Civile Law. 87, 88
 Pope Urbans legantine. 193
 Use of money 224
 Usurers infamous 42
 Usury, the kindes of it. 8. how much to be taken of a husbandman. 55. ceaseth when it hath doubled the principall. 64. is an accessorie to the principall, 233. Sea usurie, 62. greater then Land usurie, and why, 9

W

Waste ground of Ecclesiasticall Cognisance. 223. 224. & seq.
 Water courses not to be altered. 16
 Widowes how to distribute their goods, 51. such as live riotously, how provided for by the Civile Law. 269
 Wills, vid. Testaments.
 William the Conquerour, his care for Church right. 141. 142
 Winchester Church, how anciently endowed. 199
 Witnesses, what manner of men, 61. may bee compelled to appeare, 79. how many required to a Will, 134, 135. of one man dangerous, 136. false witnesses. 24
 Wives, in what cases they may be beaten 62
 Women in case of suretyship, how to be releived, 7. not endowed

The Index.

57. may be *Tutors.* 61
*Wood taken for all kinde of fell, 223. great woods in what
 cases 17th-free, 229. 230. and why, 231. wood and timber
 how distinct. ibid.*
*Words diffamatory, how punishable. 236. vid. Diffamation,
 Wraokes what, and how to be disposed of. 92, 93*

FINIS.

ERRATA.

P Ag. 36. *lin. ult. for, reade from. p. 38. l. 33. gaine, r. graine. p. 107.
 l. 8. ὁπλίτης ὀπλοφάγος. r. ὁπλίτης, ὀπλοφάγος. p. 156. l. 24. hatt, r. that.
 p. 177. l. 24. capellas, r. capella. p. 191. l. ult. in r. an. p. ibid. l. 34. ὤκο-
 φάειον. r. ὠκοφάειον. p. 212. l. 1. is r. it. p. 224. l. 15. out these r. out in
 these. p. 231. l. 8. other, secundum. r. other, but secundum. p. ibid. l. 9. but
 in that r. in that. p. 233. l. 30. ἠνωμένον. r. ἠνωμένον.*

Ex. G. A. A

